

000367

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

 1: CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)
AC 2800835

 330
07/15

 TO:
CITY ATTORNEY

 2. FROM (ORIGINATING DEPARTMENT):
CITY PLANNING & COMMUNITY INVESTMENT

 3. DATE:
5/20/2008

4. SUBJECT:

FY 2009 Community Parking District Implementation Plan and Budget Review

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

Merdith Dibden Brown x66485 MS 56D

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

Scott Kessler x66405 MS 56 D

 7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	100	70301	70302	70303	70304
DEPT.	065				
ORGANIZATION	2502				
OBJECT ACCOUNT	4881	4222	4222	4222	4222
JOB ORDER	003650	001001	070302	070303	070304
C.I.P. NUMBER					
AMOUNT	\$2,276,892	\$113,844	\$1,476,280	\$595,487	\$91,281

9. ADDITIONAL INFORMATION / ESTIMATED COST:

This Action authorizes the transfer of FY08 parking meter appropriation from General Fund 100 to CPD Fund Nos. 70301, 70302, 70303, and 70304 in Box 8. The action also authorizes the allocation and expenditure of funds that the City Council previously appropriated in the FY08 Annual Budget (FY08 Funds *plus* the FY07 carry-over balance and year-end adjustments). As a result, there is no net fiscal impact to the City.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	SCOTT KESSLER	5-21-08	8	DEPUTY CHIEF	WILLIAM ANDERSON	6-7-08
2	DEPARTMENT DIRECTOR	WILLIAM ANDERSON	5-21-08	9	COO	JAY GOLDSTONE	6-11-08
3	ENVIRONMENTAL REVIEW	KENNETH TEASLEY	5/22/08	10	CITY ATTORNEY	KIMBERLY HARRIS	7-1-08
4	LIAISON OFFICE	ED PLANK	5/28/08	11	ORIGINATING DEPARTMENT	MEREDITH DIBDEN BROWN	7/1/08
5	FINANCIAL MANAGEMENT	JULIO RUIZ	6/5/08	DOCKET COORD: SC COUNCIL LIAISON: SC for ELP 7/3/08 COUNCIL PRESIDENT MS <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: COUNCIL DATE: 7/15/08			
6	AUDITORS	FERNANDA FIGUEROA	6/9/08				
7							

11. PREPARATION OF:

☒ RESOLUTION(S)☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

See "Attachment A"

11A. STAFF RECOMMENDATIONS: Adopt the Resolution

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

1, 2, 3, 7, 8.

COMMUNITY AREA(S):

City Heights, College, Cortez Hill, Downtown, East Village, El Cajon Boulevard, Golden Hill, Hillcrest, La Jolla, Mid-City, Mission Beach, Mission Hills, Ocean Beach, Pacific Beach, University Heights, and Uptown.

ENVIRONMENTAL IMPACT:

This activity is not a "project" and is therefore not subject to CEQA pursuant to State Guidelines Section 15060 (c) (3).

HOUSING IMPACT:

None.

“Attachment A”
(Continued from Box 11)

1. Approve the FY 2009 Implementation Plan for the Downtown Community Parking District, and the FY2009 Implementation Plans and Budgets for the Uptown and Mid-City Community Parking Districts.
2. Authorize the City Auditor and Comptroller to transfer \$2,276,892 in parking meter revenues from General Fund 100 to the Community Parking District [CPD] Funds: Downtown (\$1,476,280 to Fund 70302); Uptown (\$595,487 to Fund 70303); and Mid-City (\$91,281 to Fund 70304); and the CPD Program Administration Costs Fund (\$113,844 to Fund 70301).
3. Authorize the City Auditor and Comptroller to appropriate \$3,693,379 within the Uptown CPD Fund and \$863,305 within the Mid-City CPD Fund for the operation of the FY 2009 CPD Program in the Uptown and Mid-City Community Parking Districts, as reduced by any FY 2008 agreement expenditures incurred not already deducted from these Funds, and as increased or reduced to reflect actual parking meter revenues collected in FY 2008 contingent upon the Comptroller certificate certifying that funds are available.
4. Authorizing the City Auditor and Comptroller to appropriate and expend \$3,857,491 from the Downtown CPD Fund for the operation of the FY 2009 CPD Program in the Downtown Community Parking District, as reduced by any FY 2008 CPD- related expenditures incurred not already deducted from the Downtown CPD Fund, and as increased or reduced to reflect actual parking meter revenues collected in FY 2008 contingent upon the Comptroller certificate certifying that funds are available.
5. Authorize the City Auditor and Comptroller to appropriate and expend \$113,844 from the CPD Program Administration Costs Fund for the City's administration of the CPD Program contingent upon the Comptroller certificate certifying that funds are available.
6. Authorize the Mayor to execute agreements with Uptown Partnership, El Cajon Boulevard Business Improvement Association, the Greater Golden Hill Community Development Corporation, and the University Heights Community Development Corporation which incorporate the respective FY 2009 Implementation Plans as approved by Council.

**EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE ISSUED:	June 23, 2008	REPORT NO:
ATTENTION:	City Council President and City Council	
ORIGINATING DEPARTMENT:	City Planning & Community Investment	
SUBJECT:	FY 2009 Community Parking District [CPD] Program	
COUNCIL DISTRICT(S):	1, 2, 3, 7, 8	
CONTACT/PHONE NUMBER:	Meredith Dibden Brown (619) 236-6485	

REQUESTED ACTION:

- Approve the FY 2009 Implementation Plan for the Downtown Community Parking District, and the FY 2009 Implementation Plans and Budgets for the Uptown and Mid-City Community Parking Districts.
- Authorize the City Auditor and Comptroller to transfer \$2,276,892 in parking meter appropriation from General Fund 100 to the Downtown, Uptown and Mid-City Community Parking District [CPD] Funds and the CPD Program Administration Costs Fund contingent upon the Comptroller certificate certifying that funds are available.
- Authorize the City Auditor and Comptroller to appropriate \$3,693,379 within the Uptown CPD Fund and \$863,305 within the Mid-City CPD Fund for the operation of the FY 2009 CPD Program in the Uptown and Mid-City Community Parking Districts, as reduced by any FY 2008 agreement expenditures incurred not already deducted from these Funds, and as increased or reduced to reflect actual parking meter revenues collected in FY 2008 contingent upon the Comptroller certificate certifying that funds are available.
- Authorize the City Auditor and Comptroller to appropriate and expend \$4,555,797 from the Downtown CPD Fund for the operation of the FY 2009 CPD Program in the Downtown Community Parking District, as reduced by any FY 2008 CPD-related expenditures incurred not already deducted from the Downtown CPD Fund, and as increased or reduced to reflect actual parking meter revenues collected in FY 2008 contingent upon the Comptroller certificate certifying that funds are available.
- Authorize the City Auditor and Comptroller to appropriate and expend \$113,844 from the CPD Program Administration Costs Fund for the City's administration of the CPD Program contingent upon the Comptroller certificate certifying that funds are available.
- Authorize the Mayor to execute agreements with the specified organizations, which incorporate the respective FY 2009 Implementation Plans as approved by Council.

STAFF RECOMMENDATION: Adopt the requested actions.

SUMMARY: Community Parking Districts [CPD's] are authorized under City Council Policy 100-18, adopted on March 4, 1997 and amended on November 15, 2005. The Policy establishes a "Community Parking District Program," that allows communities, with the approval of the City Council, to implement parking solutions in neighborhoods that face serious parking challenges. At present, the City has six Community Parking Districts: Downtown, Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach.

Each CPD has a designated Advisory Board responsible for developing plans and expending allocated revenue. The advisory boards operate either through a nonprofit business improvement association or a nonprofit community development corporation, which contracts with the City to develop Implementation Plans, manage CPD funds, and fulfill the community's parking goals as stated in each Implementation Plan. The Mid-city CPD was established with three sub-districts and is managed by each area's respective organization: El Cajon Boulevard, Golden Hill Community Development Corporation, and University Heights Community Development Corporation. Council Policy 100-18 allows each CPD to retain 45 percent of parking meter revenues collected within its boundaries. At this time, however, only three CPD's generate parking meter revenue within their respective boundaries: Downtown, Uptown, and Mid-City. The remaining CPD's (La Jolla, Old Town, and Pacific Beach), established by Resolution on July 27, 2005, do not have parking meters or other parking revenues generated within their respective geographic boundaries.

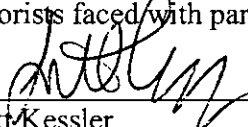
The CPD funds are dedicated for improvements and activities that increase the availability, supply, and effective use of parking to residents, visitors, and employees. Funds may be accumulated over time for future capital improvements, or may be used for improving parking management, increasing parking supply (parking structures, surface lots, etc.), marketing, signage, printed materials, web sites, landscaping, and security.

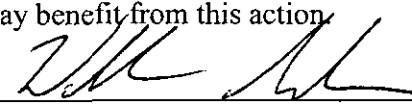
FISCAL CONSIDERATIONS: This action authorizes the transfer of \$2,276,892 of parking meter appropriation from General Fund 100 to the CPD Program Administration Costs Fund (Fund no. 70301) and the Downtown, Uptown, and Mid-City CPD Funds (Fund Nos. 70302, 70303, and 70304 respectively). In addition, this action authorizes the appropriation of (and in the case of the Downtown CPD Fund and the Program Administration Costs Fund, the expenditure of) the total amounts in those Funds (which include all revenues carried over from previous fiscal years and the current transfer of funds), as adjusted for FY 2008 CPD-related expenditures not yet deducted from the CPD Funds, and as adjusted to reflect actual parking meter revenues collected in FY 2008. Accordingly, there is no net fiscal impact to the City.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Each year, the City Council approves the Implementation Plans and Budgets for the CPD's and authorizes the appropriation and expenditure of CPD funds, which occurred most recently in R-302851, dated July 17, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Each CPD Advisory Board holds regular monthly meeting and publishes newsletters which are distributed to community residents and business owners. In addition, CPD representatives sit on the citywide Parking Advisory Board and provide updates at meetings that are noticed and open to the public.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Direct beneficiaries of this action include the agencies that administer each CPD: Centre City Development Corporation; Uptown Partnership, Inc.; El Cajon Blvd. Business Improvement Association; Greater Golden Hill Community Development Corporation and University Heights Community Development Corporation. Also, motorists faced with parking issues within the CPD's may benefit from this action.


 Scott Kessler
 Originating Department


 William Anderson
 Deputy Chief/ Chief Operating Officer

000373

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2800885

DEPT. NO.: 065

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$2,276,892.00 Fund: 100

Purpose: Authorize the expenditures and transfer of parking meter revenue from the General Fund to be transferred to the Community Parking District Fund Nos. 70301, 70302, 70303, and 70304.

Date: June 9, 2008

By: *Fernando Figueroa*
 AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT	
001	0	100	065	2502	4881	003650				\$2,276,892.00	
TOTAL AMOUNT										\$2,276,892.00	

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: _____

Vendor: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT	
TOTAL AMOUNT											

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800885

000375

UPTOWN COMMUNITY PARKING DISTRICT



Uptown Partnership, Inc.
FY 2008-09 IMPLEMENTATION PLAN AND BUDGET
FOR UPTOWN COMMUNITY PARKING DISTRICT

APRIL 17, 2008

Uptown Partnership, Inc. began as a community association in 1997. When the San Diego City Council created the Uptown Community Parking District (CPD) on March 4, 1998 under Council Policy 100-18, the Partnership took on the responsibility of administering the Uptown CPD for the City. The Partnership incorporated as a 501(c)(3) nonprofit community benefit corporation on February 26, 1999.

Our mission is to invest in projects that balance parking availability, traffic circulation, transit effectiveness, and pedestrian mobility in the Uptown Community. Uptown Partnership envisions a vibrant community in which creative collaborations enhance the vitality of businesses, sustain the health of neighborhoods, and promote a cohesive community.

In compliance with Council Policy 100-18, the Community Parking District Policy, Uptown Partnership, Inc. presents its annual Implementation Plan for the Uptown Community Parking District. This plan comprises the following sections.

A - COMMUNITY INVOLVEMENT IN CPD MANAGEMENT

B - SCOPE OF SERVICES | PROGRAM BUDGET FY 2008-09

C - OPERATING BUDGET FY 2008-09

D - RECENT ACTIVITIES AND ACCOMPLISHMENTS IN UPTOWN CPD

E - RECOMMENDATIONS FOR CONSIDERATION

EXHIBITS

1 - INSURANCE DOCUMENTATION: GENERAL LIABILITY & WORKERS' COMPENSATION

2 - PERSONNEL SCHEDULE

3 - WORK FORCE REPORT

4 - SUBCONTRACTOR LIST

5 - BOARD OF DIRECTORS



A. COMMUNITY INVOLVEMENT IN CPD MANAGEMENT

1. COMMUNITY CONTEXT

Uptown encompasses the diverse neighborhoods of Bankers Hill, Five Points-Middletown, Hillcrest, Mission Hills, and Park West.

Uptown is one of the oldest areas in the City of San Diego; therefore, issues regarding parking, traffic, and pedestrians often arise from the need to adjust present-day needs to the aging infrastructure. Several examples will illustrate this dilemma.

- a. Parking demand by businesses, residents, and visitors exceeds the supply on a regular basis in commercial nodes because the community originally was built prior to establishment of current standards for off-street parking.
- b. Construction projects aggravate neighborhood parking shortages because they restrict nearby on-street parking.
- c. Businesses and residences have been built side-by-side and business area parking spills over into nearby residential areas.



George Franck, Uptown Partnership's planner, helps residents at a Five Points 2007 neighborhood meeting identify parking and traffic issues.

2. COMMUNITY STUDIES

Since 1997, Uptown Partnership, Inc. has completed a number of studies relating to on- and off-street parking availability, traffic calming, and pedestrian safety. Several examples will illustrate the scope of these efforts.

- a. Preparing and publishing a Strategic Mobility Plan (1999) and updating it (2003); next update scheduled for FY 2008-09.
- b. Underwriting and publishing the FeetFirst! plan to improve walkability in Uptown (2003).
- c. Mapping on-street parking conditions in four impacted neighborhoods – Park and University; Laurel Street corridor between First and Sixth Avenues; central Mission Hills; Five Points (Washington and India Streets) – and updating conditions in Central Hillcrest (2004).
- d. Conducting and publishing a report on an Uptown parking summit attended by approximately 80 community members (2005).
- e. Preparing a mobility plan for the north-south travel corridor along Fourth, Fifth, and Sixth Avenues that provided the basis for a \$430,000 grant from Caltrans to the City of San Diego and SANDAG for further study (2005).

- f. Preparing a comprehensive study of parking needs in a 12-block area in central Hillcrest, using an earlier study (2002) as a foundation. Both studies examined: existing and future need for public parking; and potential sites for a parking garage. The most recent study also analyzed financial considerations associated with real estate acquisition, construction, and operation of a public parking garage (2005).
- g. Preparing a plan for immediate and longer-term improvements to parking, traffic, and walking conditions in the Five Points commercial center (2007).
- h. Contributing technical support to the Hillcrest Corridor Mobility Strategy prepared by the City of San Diego, which will become part of the Mobility Element for the Uptown Community Plan update (2008).

3. COMMUNITY PROJECTS

Uptown Partnership, Inc. has a history of initiating and participating in City of San Diego capital improvement projects that enhance parking, driving, and walking in Uptown. Several examples will illustrate these efforts; for the most recent projects, refer to section D. RECENT ACTIVITIES AND ACCOMPLISHMENTS below.

- a. Available on-street public parking has increased as a result of converting parallel parking to angle parking and adding curb-side spaces where possible in Uptown.
- b. Washington Street median improvements have added landscaping and aesthetic enhancements to the neighborhood.
- c. Installation of way-finding signs that direct drivers to privately-owned public parking lots helps them locate parking convenient to their destinations.
- d. University Avenue median improvements east of Tenth Avenue add aesthetic enrichment and safety features.
- e. Reconstruction of the sidewalks and intersections on the 1200 and 1400 blocks of University Avenue improves pedestrian conditions and calms traffic.

4. COMMUNITY RELATIONS

In all its programs, Uptown Partnership, Inc. works closely with the Uptown community. Several examples will illustrate these community relations efforts; for the most recent activities, refer to section D. RECENT ACTIVITIES AND ACCOMPLISHMENTS below.

- a. The Board of Directors is comprised of business people and residents of Uptown who volunteer their time and expertise to oversee the Partnership's programs, outreach, fiscal soundness, and organizational management.
- b. Staff writes the work plans for projects and studies to include public participation as an important element whenever possible.
- c. Staff maintains close contact with key neighborhood organizations, including Hillcrest Association (BID), Hillcrest Town Council, Mission Hills Association (BID), Mission Hills Town Council, Bankers Hill-Park West neighborhood group, Downtown Parking Management Group, and Uptown Planners.

- d. Staff works with other community leaders to mitigate neighborhood impacts of City capital improvement projects during the construction phase when travel on streets and sidewalks is disrupted and access to businesses is constrained.
- e. The Board of Directors and staff maintain open communications with Council Districts Two and Three, both of which represent the Uptown community.
- f. Uptown Partnership, Inc. keeps the community informed through quarterly newsletters and distribution of printed notices for neighborhood workshops. Its web site at www.uptownpartnership.org has up-to-date notices, agendas, and minutes for Board of Directors' meetings.
- g. Sales of City of San Diego parking cards to the public brings people in the door daily with questions and comments about the Uptown Community Parking District, and staff provides up-to-date information.

Mission Hills Intersection Gets Facelift in February

The City of San Diego is upgrading the water main system in portions of Bankers Hill. Construction on this project, officially known as Water Group Job 062, began last November and is expected to continue through mid-June 2008.

Streets getting water main upgrades include First and Second Avenues between Laurel and Juniper Streets, Third Avenue between Laurel and Kameh Streets, Fourth Avenue between Laurel and Juniper Streets, and Juniper Street between Alameda Street and Fifth Avenue.

At the beginning of the project, the City will shut down water service temporarily for these streets. Homes and businesses in the construction area will receive water through an above-ground "taphole" during the construction. Typically, construction takes two to three weeks per block. On-street parking and driveway access also may be temporarily restricted, and the contractor will re-route traffic around excavation and staging areas.

Homes and businesses receive notices of water shut-downs and construction several days before work starts.

Beginning in January, Uptown Partnership and the City will hold periodic neighborhood meetings to keep the public informed about project impacts.

This upgrade is part of a larger city-wide plan to replace the City's aging water and sewer system, which in older neighborhoods like Bankers Hill, was installed as early as 1920.

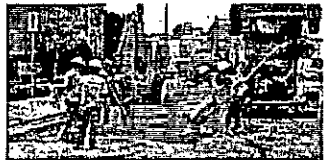
Residents and businesses may call City Engineer Toralbe Gbureckui at (619) 427-3246 or Onix Corporation at (619) 941-4532 with questions about the project. Additional information is available under the heading Construction Impacts on the Project page of our website at www.uptownpartnership.org.

New Water Mains Installed in Bankers Hill

The City of San Diego is upgrading the water main system in portions of Bankers Hill. Construction on this project, officially known as Water Group Job 062, began last November and is expected to continue through mid-June 2008.

Streets getting water main upgrades include First and Second Avenues between Laurel and Juniper Streets, Third Avenue between Laurel and Kameh Streets, Fourth Avenue between Laurel and Juniper Streets, and Juniper Street between Alameda Street and Fifth Avenue.

At the beginning of the project, the City will shut down water service temporarily for these streets. Homes and businesses in the construction area will receive water through an above-ground "taphole" during the construction. Typically, construction takes two to three weeks per block. On-street parking and driveway access also may be temporarily restricted, and the contractor will re-route traffic around excavation and staging areas.



Workers pour a concrete cap over a newly installed water main on First Avenue.

January 2008

INSIDE THIS ISSUE

- Parking Management Plan
- Four-Piece Parking Card
- Public Consultation District
- Carded Area
- Three-Mile Intersection
- Event Entry Fee
- City of San Diego

UPTOWN PARTNERSHIP Reporter

Parking on Public Streets Managing a Resource

Whether it's a dinner date on a Friday night or picking up dry cleaning on a weekday afternoon, we often confront the problem of finding parking in urban communities like Uptown. Increasing the supply of parking usually is the first solution that comes to mind. However, in older communities, building parking garages is not always feasible nor is it necessarily desirable. No one wants to live in a place where, in the words of Joel Myerson, we "pave paradise and put up a parking lot."

In the second of a three-part series on public parking, we will explore parking management methods as a way to make the available parking resource "stretch" to meet the needs of more people. Todd Lerman, author of *Parking Management Best Practices*, describes a number of ways to accomplish this objective.

(Continued on page 2)



Three-mile intersection located in Bankers Hill, between First and Second Avenues, is a key intersection in the Uptown Community Parking District.

UPTOWN PARTNERSHIP

3176 Fifth Avenue, Suite B
San Diego, CA 92103

CHANGE SERVICE REQUESTED

NONPROFIT
U.S. POSTAGE
PAID
San Diego, CA
Permit Number
0182

B. SCOPE OF SERVICES | PROGRAM BUDGET FY 2008-09

1. SCOPE OF SERVICES

- a. In accordance with City Council Policy 100-18, Uptown Partnership, Inc. shall render the following Scope of Services on behalf of the Uptown Community Parking District. Allocations for these services are in the Program Budget below.
- b. The Scope of Services for Uptown Community Parking District is comprised of elements of the Program Budget:
 - Studies;
 - Projects;
 - Community Relations;
 - Capital Projects Financing; and
 - Contingency Financing.
- c. The remainder of the Program Budget falls into two categories – Governance and Operations – which support the business and management activities necessary to fulfill the Scope of Services.

2. PROGRAM BUDGET CONTEXT

- a. The Program Budget reflects a work planning process conducted by the staff and Board of Directors of Uptown Partnership, Inc. The first part of this process involves selecting and ranking activities for the coming fiscal year and identifying possibilities for the future. The second part entails budgeting for the personnel, consulting, construction, and cash outlays associated with these activities.
- b. During the fiscal year, Uptown Partnership, Inc. may adjust its priorities within its work plan and program budget to take advantage of unforeseen factors such as income generation, funding availability, and support from political leaders, City staff, and the community.
- c. Studies conducted in one fiscal year will result in projects done in the following fiscal year, and so on. Priorities may change as conditions change; however, a significant benefit of planning ahead is to maintain an excellent return on investment (ROI).

3. DETAILED PROGRAM BUDGET AND ACTIVITIES – NEXT PAGE

000382

ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UP staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
STUDIES [Consultants]	303,700	60,800	364,500	-78,700	285,800
Uptown Parking and Mobility Update Conduct comprehensive analysis of meter use and on-street parking patterns in the context of community land uses and traffic in Uptown; Prepare recommendations to optimize usability of public parking; Review the feasibility of siting a parking garage in central Hillcrest; Develop an agreement with the City of San Diego for investing meter revenues to stimulate private creation of public parking	150,000	37,510	187,510	0	187,510
Uptown Community Plan Update Analyze data and policies prepared by the City and its consultant(s) as they relate to parking and mobility; Advise Board of Directors	0	7,980	7,980	0	7,980
Library Shared Parking Design Examine design and feasibility issues and recommend alternatives for optimizing the use of 90 public parking spaces included in the current Mission Hills-Hillcrest Library plans; Timing of this study depends on City progress on building the library, likely not before FY 2010	0	0	0	0	0
Washington Intersections @ 4th & 5th Design Placed "on hold" while the City seeks funding for mobility study of the east-west travel corridor that includes this intersection; When completed, the east-west study will become part of the community plan update and provide updated guidance for improving this intersection	0	0	0	0	0
Normal St: Blaine to Lincoln [DMV project] Examine technical public parking and mobility issues associated with DMV redevelopment plans on Normal Street; Timing of this study depends on DMV progress in planning its redevelopment	15,000	2,440	17,440	0	17,440
Five Points Focused Parking & Traffic Study Redevelopment Agency will provide funding of \$50,000 toward the \$75,000 focused study identified in the 2007 Five Points initial study.	75,000	8,480	83,480	-50,000	33,480
Bankers Hill-Park West Streetscape Design Develop streetscape design guidelines in conjunction with the Bankers Hill neighborhood group; Additional funding provided by consultants' \$10,000 <i>pro bono</i> contribution and an \$18,700 grant from County Supervisor Roberts	48,700	1,950	50,650	-28,700	21,950
Uptown Parking Investments Develop specific strategies to invest funds in private developments to provide additional public parking; Project opportunities may include: Scripps-Mercy parking garage, AT&T lot at 635 Robinson, Village Hat Shop, St. Paul's cathedral expansion, DMV redevelopment proposal; Timing depends on private project schedules	15,000	2,440	17,440	0	17,440
PROJECTS [Construction]	408,200	10,740	418,940	-150,000	268,940
Fourth & Quince Improvements Contribute matching funds to City grant application of ~\$260,000; \$35,000 intended for flashing crosswalk; City receipt of grant funding controls schedule	35,000	1,950	36,950	0	36,950

000383

ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UPI staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
Washington & Goldfinch Improvements \$168K already transferred to CIP for project; Groundbreaking held in March 2008; Anticipate FY 2009 completion; See also Community Relations - Construction Mitigation	0	0	0	0	0
Washington Intersections @ 4th & 5th Placed "on hold" while the City funds a mobility study of the east-west travel corridor that includes this intersection; When completed, the east-west study will become part of the community plan update and will provide updated guidance for improving this intersection	0	0	0	0	0
Uptown Flashing Crosswalks Install pedestrian-operated flashing crosswalks at three Uptown intersections identified by need and community input	105,000	1,950	106,950	0	106,950
Intersection Improvements Install pedestrian advance and count-down signals and ladder crosswalks at five intersections identified with assistance of Traffic Engineering; Anticipate completion in FY 2008	0	0	0	0	0
Uptown Multi-space Meter Installations Purchase and install multi-space meters in Uptown locations identified by need and community input	90,000	2,930	92,930	0	92,930
Florence School Shared Parking Facilities Fund parking lot improvements required for public use of Florence School parking lot on evenings and weekends; Contribute funding subsidy for shared parking	21,000	1,950	22,950	0	22,950
Normal Street Median: University to Blaine Previous allocation of \$159,250 already transferred into CIP for project; Completion expected in FY 2009; See also Community Relations - Construction Mitigation and Contingency Financing	0	0	0	0	0
Normal Street: Blaine to Lincoln [DMV project] State DMV has stated its intent to redevelop its property on Normal Street, which provides an opportunity to add public parking and reconstruct the adjoining median; Timing depends on DMV schedule, not likely before FY 2010	0	0	0	0	0
Washington-India Street Median Provide bridge funding for initial three years of median maintenance in order to allow Mission Hills BID time to create a Maintenance Assessment District that will assume maintenance funding and responsibilities	7,200	980	8,180	0	8,180
Five Points Capital Improvements Install upgrades identified in 2007 Five Points report; Funding provided by Redevelopment Agency and work done by City Traffic Engineering	150,000	980	150,980	-150,000	980
I-5 Freeway Underpass Improvements at Washington Street Install landscape, sidewalk, and lighting improvements with Caltrans cooperation to improve access and safety between commercial area and trolley station; Timing depends on completion of additional Five Points study (above), likely not before FY 2010	0	0	0	0	0

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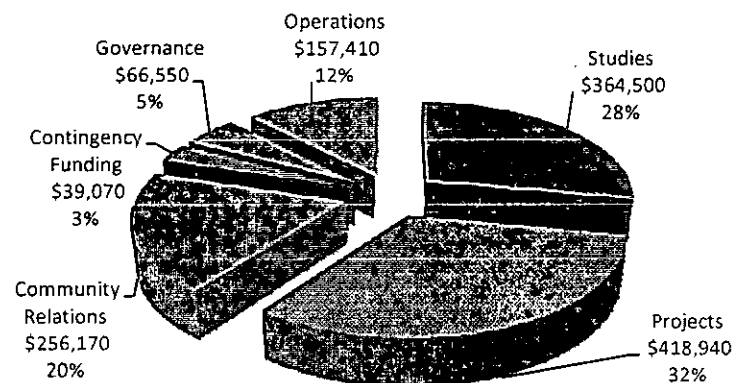
ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UPI staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
Bankers Hill-Park West Improvements Install parking and traffic calming and enhancements to improve vehicle and pedestrian movement consistent with streetscape design guidelines; Timing depends on completion of streetscape design guidelines (above), likely not before FY 2010	0	0	0	0	0
COMMUNITY RELATIONS	186,750	69,420	256,170	-168,360	87,810
Parking Card Program Sales and Management Program Assistant sells cards, provides public assistance, manages card program and reseller sales; Sales income goes back into program	168,360	9,560	177,920	-168,360	9,560
Construction Mitigation Staff works with Council offices and BIDs to alleviate public project impacts on neighborhoods	0	12,870	12,870	0	12,870
Utility Art Box program Partnership staff coordinates efforts of volunteer artists and provides art supplies to paint sidewalk utility boxes; Partnership assumes maintenance of painted boxes	7,090	8,100	15,190	0	15,190
Public Awareness Partnership staff prepares newsletter periodically for distribution to 2,200 recipients, maintains current information on website, and provides parking information to public	11,300	9,540	20,840	0	20,840
Community Organizations Liaison Executive Director maintains close working relationships with City staff, community leaders, and political representatives and attends numerous meetings in community	0	28,130	28,130	0	28,130
Uptown Transit Corridor Monitoring Staff Planner coordinates community responses to transit changes proposed by MTS three times per year	0	1,220	1,220	0	1,220
CONTINGENCY FINANCING	39,070	0	39,070	0	39,070
Normal Street Median: University to Blaine Previous allocation of \$149,250 already in City's CIP fund for project, plus \$134,000 in DIF funds	39,070	0	39,070	0	39,070
GOVERNANCE	0	66,550	66,550	0	66,550
Business & Strategy Strategic Planning Fiscal Policies Board Support Legal & Corporate Matters	0	36,680	36,680	0	36,680
Management Office Systems & Equipment Maintenance Staff Work Planning & Assessment	0	29,870	29,870	0	29,870

ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UPI staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
OPERATIONS	157,410	0	157,410	0	157,410
Rent & Utilities	30,710	0	30,710	0	30,710
Insurance	8,990	0	8,990	0	8,990
Payroll Taxes & Benefits	26,310	0	26,310	0	26,310
Services, Supplies, Maintenance & Repairs	62,140	0	62,140	0	62,140
Professional Services	29,260	0	29,260	0	29,260
CONTRACT AMOUNT					3,234,012
TOTALS FY 2009	1,095,130	207,510	1,302,640	-397,060	905,580
CAPITAL PROJECTS FINANCING					2,328,432
Uptown Parking Investments					
Invest funds in projects to provide additional public parking; Project opportunities may include: Scripps-Mercy garage construction; AT&T at 635 Robinson; Village Hat Shop; St. Paul's cathedral expansion; DMV redevelopment project; Timing depends on market opportunities					

NOTE: Except for Governance and Operations, personnel are directly engaged in carrying out CPD programs

Personnel (staff) as percent of CPD contract	6.4%
Administration (governance+operations) as percent of CPD contract	6.9%
Personnel (staff) as percent of total FY outlay	15.9%
Administration (governance+operations) as percent of total FY outlay	17.2%

Expenditures By Program



C. OPERATING BUDGET FY 2008-09

1. OPERATING BUDGET CONTEXT

- a. The operating budget summarizes the expected income received and expenses paid in the coming fiscal year.
- b. Entries are recorded consistently with the QuickBooks chart of accounts that Uptown Partnership, Inc. has established to maintain its financial records.
- c. The operating budget assumes that income and expenses will be equal because the source of funding for Uptown Partnership, Inc. is reimbursement of expenditures under the contract to administer the Uptown Community Parking District.
- d. Net Income equals the amount of Capital Projects Financing being accrued to address major capital needs.

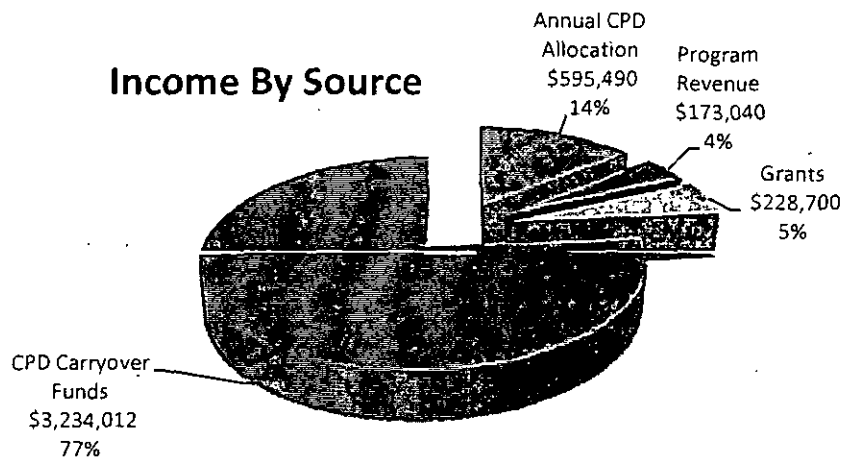
2. DETAILS OF OPERATING BUDGET – NEXT PAGE

Operating Budget/Chart of Accounts	FY 2009 CPD Funds	FY 2009 Other Funds	FY 2009 Budget Total
Ordinary Income/Expense			
Income			
4000 · CPD Parking Meter Revenue Allocation	595,490	0	595,490
4600 · Parking Card Sales Income	0	168,360	168,360
4650 · Parking Card Shipping Income	0	930	930
4675 · Other Parking Card Sales	0	0	0
4950 · Interest Income	0	1,300	1,300
4975 · Misc Income (e.g., single-time rebates)	0	2,450	2,450
Total Income	595,490	173,040	768,530
Cost of Goods Sold			
5000 · Cost of Goods Sold	0	168,170	168,170
Gross Profit	595,490	4,870	600,360
Expense *			
7001 · Artist Supplies Utility Art Box Program	7,090	0	7,090
7015 · Bank Service Charges	20	0	20
7025 · Computer, Software & Maintenance	9,300	0	9,300
7028 · Credit Card Service Charges	2,780	0	2,780
7040 · Dues and Subscriptions	370	0	370
7050 · Employee Training	590	0	590
7051 · Meetings, Conferences & Seminars	4,570	0	4,570
7060 · Equipment Rental	5,350	0	5,350
7071 · Employee Fiduciary Bond	440	0	440
7073 · General Liability	3,880	0	3,880
7074 · Workers Compensation	2,080	0	2,080
7075 · Directors & Officers Liability	2,590	0	2,590
7080 · Interest & Finance Charges	20	0	20
7095 · Licenses and Permits	190	0	190
7100 · Marketing and Events	1,690	0	1,690
7120 · Miscellaneous Expense	0	0	0
7130 · Office Supplies and Services	4,950	0	4,950
7141 · Accounting & Auditing	19,260	0	19,260
7144 · Legal [\$20K pro bono retainer w/ law firm]	0	0	0
7142 · Graphics Design	10,000	0	10,000
7146 · Outside Contractors (e.g., security, storage)	2,670	0	2,670
7170 · Postage and Shipping	6,060	0	6,060
7180 · Printing and Reproduction	13,480	0	13,480
7190 · Rent	28,080	0	28,080
7230 · Telephone	2,610	0	2,610
7253 · Mileage	300	0	300
7255 · Parking & Transportation	100	0	100
7260 · Utilities	2,630	0	2,630

Operating Budget: Chart of Accounts	FY 2009 CPD Funds	FY 2009 Other Funds	FY 2009 Budget Total
7161 Director's Salary	74,800	0	74,800
7162 Office Wages	130,700	0	130,700
7163 Employee Benefits	10,280	0	10,280
7164 Payroll Tax Expense	16,440	0	16,440
7145 - Planning Consultants [Studies]	303,700	78,700	382,400
Total Expense	667,020	78,700	745,720
Net Ordinary Income	-71,530	-73,830	-145,360
Other Income/Expense			
Other Income			
8100 - Other Income			
Redevelopment Agency Construction Funds		150,000	
Redevelopment Agency Study Grant		50,000	
County Community Projects Grant		18,700	
Consultant <i>Pro Bono</i> Contribution		10,000	
CPD carryover funds	3,234,012	0	3,234,012
Total Other Income	3,234,012	228,700	3,462,712
Other Expense			
9000 - Projects [Construction]	268,940	150,000	418,940
9000 - Contingency: Normal Street Median	39,070	0	39,070
Total Other Expense	308,010	150,000	458,010
Net Other Income	2,926,002	78,700	3,004,702
Total Net Income = Capital Projects Financing	2,854,472	4,870	2,859,342

* Expense: Increases for FY 2009 generally reflect 110% of FY 2008 projected expenditures where available, except insurance & utilities=115%

NOTE: Cash in treasury = \$3,234,012



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MIDCITY COMMUNITY PARKING DISTRICT
EL CAJON
UNIVERSITY HEIGHTS
GOLDEN HILL



Mid-City Community Parking District

FY 2009 Scope of Work

Program Objectives

Parking Enhancement

On-Street Parking Adjustments

Continue evaluation of feasibility of adjusting on-street parking to increase available spaces using angle and head-in parking

- Work with City to simplify installation policies
- Identify appropriate locations for angle and/or head-in parking
 - Evaluate street widths and curb cut locations
 - Solicit support from adjacent residents and property owners

Parking Impact Assessment

Evaluate effectiveness of current commercial district on-street and off-street parking utilization to insure efficient use of space

- Identify appropriate locations, if any, for installation of time limited and/or metered parking and oversee installation where supported
- Work with businesses to install or adjust curb markings (red, white, blue, green) as requested and warranted
- Identify feasibility of valet and/or remote parking opportunities for business and/or special event activities and implement as appropriate
- Identify potential off-street parking locations in and adjacent to commercial districts and support increased utilization as necessary

Traffic Calming Feasibility

Identify and recommend locations for use of traffic calming measures to enhance vehicular and pedestrian safety

- Identify locations for crosswalk enhancements and recommend specific types of treatments
- Identify locations for installation of speed indicator devices
- Identify locations for installation of additional pedestrian countdown indicators

Zoning Criteria

Investigate appropriateness of existing commercial zoning regulations relative to off-street parking requirements and recommend changes where warranted

- Evaluate current off-street requirements and recommend adjustments as necessary to improve parking utilization
- Evaluate the use of in-lieu fees to mitigate the impact of required parking regulations on certain desired changes of use

Public Information

Communicate on-going parking enhancement and related activities to stakeholders through various forms of outreach including printed and electronic methods, and attendance at pertinent meetings and workshops

Newsletters - Produce newsletters as needed to affected property owners, residents, and business owners detailing program and project activities

Outreach - Attend community meetings as necessary to communicate program and project activities and to seek feedback from affected stakeholders

Surveys - Produce and distribute resident and business surveys seeking feedback on parking, transit, and pedestrian related activities

Website - Maintain website detailing current status of parking district activities

Pedestrian and Transit Enhancement*Pedestrian Right-of-way Improvements*

Evaluate methods of improving pedestrian right-of-way conditions within the commercial districts.

- Identify and implement methods of improving pedestrian safety and security
- Identify and support pedestrian linkages connecting the various pedestrian oriented destinations
- Identify and implement establishment of sidewalk cafes and other methods of actively using the public right-of-way
- Initiate public art activities along and adjacent to the pedestrian right-of way

Transit Enhancement

Evaluate and support methods of enhancing the availability and utilization of public transit

- Meet with SANDAG and MTS as needed to better understand their approaches to transit service and to advocate for enhancements as warranted
- Monitor SANDAG approaches to the development of bus rapid transit service, and advocate for methods to expedite and enhance those services as warranted
- Identify and implement methods of improving the safety, usability, and appearance of transit stops as warranted

Public Improvements*Vehicular Enhancements*

- Install angle and head-in parking at identified locations
- Install speed indicator devices at identified locations
- Install parking meters at requested locations
- Close abandoned driveways and install curbs at identified locations

Pedestrian Enhancements

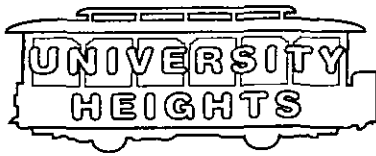
- Install crosswalk upgrades at identified locations
- Install pedestrian countdown indicators at identified locations
- Install public art at identified locations
- Install sidewalk cafes at identified locations

COMMUNITY PARKING DISTRICT PROGRAM **Fiscal Year 2009**

Contractor: El Cajon for Mid-City Community Parking District
Mailing Address: 3727 El Cajon Boulevard San Diego, CA 92105
Fiscal Year End: June 30, 2009

El Cajon BIA for Mid-City Parking District: Budget Summary FY09

Expenditure Categories	Total FY09 Organization Budgeted Expenses
Parking Enhancements	
Head-In Parking Assessment	\$12,000
Angle Parking Assessment	\$12,000
Parking Impact Assessment	\$36,000
Traffic Calming Assessment	\$12,000
Zoning/ In-Lieu Fee Criteria	\$12,000
Subtotal	\$84,000
Public Information	
Newsletters	\$12,000
Outreach	\$6,000
Surveys	\$6,000
Website	\$6,000
Subtotal	\$30,000
Pedestrian and Transit Enhancement	
Pedestrian Right-of-Way Improvements	\$36,000
Transit Options	\$36,000
Subtotal	\$72,000
Public Improvements	
24 Crosswalk Enhancements	\$24,000
12 Countdown Indicators	\$24,000
2 Electronic Speed Indicators	\$24,000
6 Driveway Closures	\$60,000
40 Parking Meters	\$36,000
24 Utility Box paintings @ \$500	\$12,000
Subtotal	\$180,000
Administration	
Staff	\$18,000
Technical Assistance	\$24,000
Non-personnel	\$12,000
(rent, utilities, supplies, insurance)	
Subtotal	\$54,000
Total	\$420,000.00
Contingency	\$40,000.00
Reserve (Future Capital Improvements)	\$140,000.00
GRAND TOTAL	\$600,000.00



**University Heights CDC – Community Parking District
Annual Plan and Budget – FY 2008 – 2009**

Introduction and Brief History

The University Heights CDC has been in existence since 1987, receiving its 501(c) (3) non-profit status in 1991. The University Heights Community Parking District (UHCPD) was officially recognized as an independent sub area under the MidCity Parking District in 1999 because of the serious parking problems in its business district. Being an older urban community, the main commercial area is a combination of mixed use properties with several commercial uses that have late hours and minimal off street parking. Consequently, the commercial parking flows over to the adjacent residential areas creating many conflicts between business owners and residents.

Community Issues and Involvement

Since then the UHCPD has completed and implemented Phase I of a Parking & Mobility Study; added angle parking where feasible, a pedestrian refuge crossing to its neighborhood park, improved pedestrian safety with crosswalks and stop signs. It has joined with residents to resolve parking issues with late night businesses, one of which has initiated valet parking as a result. Board members participate in and sit on the boards of various other organizations – Uptown Planners, Greater North Park Planning Committee, UH Park & Recreation Council, UH Maintenance Assessment District, Friends of the UH Branch Library, the University Heights Community Association (UHCA). A board member is currently an appointee from Council District 3 to the City's Parking Advisory Board.

The UHCDC board is also the board for the CPD and as a result incorporates parking issues at each meeting to which an aide from Council District 3 and the CPD Program Manager are invited to attend. The UHCPD works with the UHCA in resolving issues that are raised by residents at its monthly meetings. The UHCPD has had bike lanes installed on Madison, Maryland and Cleveland and added striping along the parallel parked cars on Adams Avenue between Louisiana and Alabama to narrow lanes and slow traffic, and this year will seek additional parking on Meade when the Birney Joint Use Playing Field re-opens in 2009. The UHCDC is also supportive of needed improvements with a reinitiated Caltrans grant to provide design guidelines for the east/west arterials along Washington/Normal/Park Blvd., University and Robinson. This grant incorporates pedestrian safety, traffic calming, mitigation of traffic congestion, and increasing methods of facilitating greater use of public transit.

Proposed Activities for FY 2009

The program budget consists of operating expenses for office and meeting space -- 55% of total budget.

The program budget consists of marketing expenses of \$2,230– 6% of total budget. Outreach and promotion will be through sales of meter cards in the office, at special promotional events, availability through the new UHCDC website, meetings and conferences, articles in the *University Heights News* and distribution of Parking 101 through libraries and the DMV office.

4452 Park Boulevard, Suite 104
San Diego, CA 92116-4039
(619) 297-3166 Fax: (619) 297-3228

Mailing:
P. O. Box 3115
San Diego, CA 92163-1115

**University Heights CDC – Community Parking District
Annual Plan and Budget – FY 2008 – 2009
(Continued)**

In addition the program budget consists of the following two projects:

(1) Work plan to complete Phase II of Parking Mobility Study with contingency for additional meetings by the board's parking consultant The Mission Group in the amount of \$15,000– 39% of total budget. This may also include the following:

- Review of yellow and red parking zones to free up additional spaces;
- Angle parking south side on the rest of Meade Avenue between North Avenue and Campus, which will require School District sign off;
- Installation in early 2009 of Driver Feedback sign on Mission Avenue;
- Evaluation of Driver Feedback sign on Madison between Texas & Park Blvd.,
- Pedestrian safety survey in the *University Heights News* and on the UHCDC website;
- Distribution of a parking survey to businesses within the Park Blvd. and Adams Ave. commercial corridors from Meade to Louisiana to seek parking solutions;
- Evaluation on whether shuttle service to Trolley Barn Park summer concert series from First Southern Baptist Church is feasible as well as evaluation on how parking around the Trolley Barn Neighborhood Park can be increased;
- Promotion and sales of Pre-Paid Parking Meter Cards.

(2) Website should be up and running by the start of the FY2009 contract year. The \$5,275 cost has been offset by an AT&T grant of \$4,000 and subsidies from the UHCPD plus other community programs sponsored by the UHCDC that do not have access to a website. This project will provide greater outreach and promotion of both the City's Community Parking Program and the UHCPD through surveys, e-newsletter, updates on parking innovations by the City, information on Pre-Paid Parking Meter Cards, and links to other parking informational sites including the DMV website.

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COMMUNITY PARKING DISTRICT
Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

CHART OF ACCOUNTS	CDP Funds	Other Funds	Total
Ordinary Income/Expense			
Income			
CPD	208,437		208,437
Other (e.g. Sale of Parking Cards)	0	0	0
Total Income	<u>208,437</u>	<u>0</u>	<u>208,437</u>
Expense			
Personnel	0	0	0
Executive Director	0	0	0
Administrative Assistant	0	0	0
Fica/R Expense	0	0	0
Health Insurance	0	0	0
Total Personnel	<u>0</u>	<u>0</u>	<u>0</u>
Operating			
Rent - Office	2,400	0	2,400
Telephone/Fax/Cell/Internet	1,600	0	1,600
Mtngs/Conf/Dues/Subscriptions	350	0	350
Printing	1,500	0	1,500
Insurance - Liability	4,000	0	4,000
Insurance-Workers Comp	0	0	0
Total Insurance	<u>4,000</u>	<u>0</u>	<u>4,000</u>
Postage	500	0	500
Audit	2,000	0	2,000
Accounting Services	1,800	0	1,800
Office Supplies	1,600	0	1,600
Other Expense - professional services	1,500	0	1,500
Other Expense - purchase of meter cards	1,000	0	1,000
Other Expense - special events	600	0	600
Other expense - licenses and property taxes	185	0	185
Other Expense - equipment lease	2,200	0	2,200
Other Expense - utilities	850	0	850
Other Expense - HOA special assessments	1,750	0	1,750
Total Operating	<u>23,835</u>	<u>0</u>	<u>23,835</u>
Outreach/Promotion			
Newsletter	0	0	0
Marketing (Web Site, Brochure)	0	0	0
Specify Other	0	0	0
Total Outreach/Promotion	<u>0</u>	<u>0</u>	<u>0</u>
Contracts			
Contractor 1	15,000	0	15,000
Contractor 2	0	0	0
Total Contracts	<u>15,000</u>	<u>0</u>	<u>15,000</u>
Program / Reserve	<u>0</u>	<u>0</u>	<u>0</u>
Contingency	<u>0</u>	<u>0</u>	<u>0</u>
Total Expense	<u>38,835</u>	<u>0</u>	<u>38,835</u>

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COMMUNITY PARKING DISTRICT
Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

Net Ordinary Income	<u>169,602</u>	<u>0</u>	<u>169,602</u>
Net Income	<u>\$169,602</u>	<u>\$0</u>	<u>\$169,602</u>

Greater Golden Hill Community Development Corporation

000399

1235 28th Street - San Diego, California 92102

Ph. (619) 696-9992 Fax (619) 696-6048 www.goldenhillcdc.org

Greater Golden Hill Parking Meter District

Greater Golden Hill Community Development Corporation

2008-2009 Scope of Services

In accordance with the City Council Policy 100-18, the following scopes of services shall be rendered by the Greater Golden Hill Community Development Corporation on behalf of the Mid-City Community Parking District

Planning and Outreach: 25th Street Renaissance Project

The GGHCDC is working directly with the City of San Diego's Capital Improvement Projects Division and Traffic Engineering to implement the following toward the completion of the 25th Street Renaissance Project. This project will result in significant infrastructure improvements that will calm traffic, improve parking, and encourage pedestrian and bicyclist use of a major community thoroughfare. Financing comes primarily from a 1.5 million dollar grant from CalTrans, with additional CDBG funds.

Item 1. Completion of conceptual design

- a. Completion of landscape architecture design for engineering plans that account for added on-street parking and addition of angled on-street parking

Item 2. Community outreach.

- a. Community outreach efforts including stakeholder meetings, public noticing about the project, and website, newsletter, and e-mail coverage of project updates.
- b. Presentation of plans to local community groups including the Greater Golden Hill Planning Committee, South Park Business Group, etc.

Public Improvements: 25th Street Renaissance Project

During the 2008-2009 the Greater Golden Hill Community Development Corporation will begin construction of Phase I of the 25th Street Renaissance Project, between Broadway and B Street.

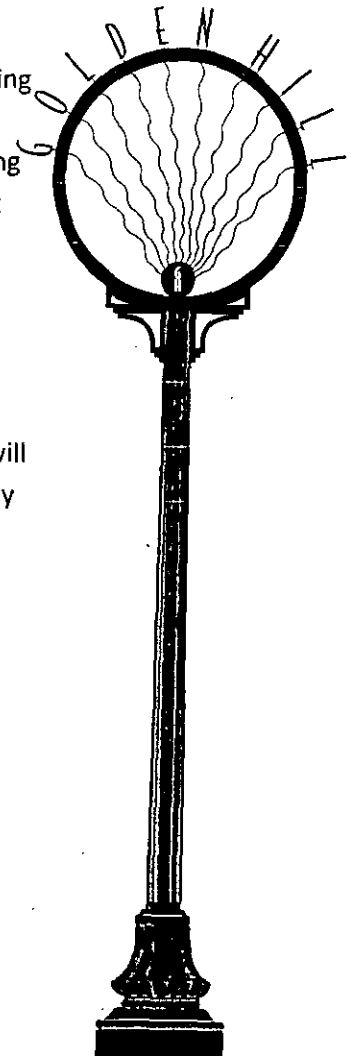
Item 1. Begin implementation of street parking and angled parking plans between B Street and Broadway

Item 2. Begin implementation of traffic and pedestrian signage plans.

Item 3. Begin implementation of sidewalk and curb/gutter plans

Item 4. Implement planned street and pedestrian light plans.

Item 5: Implement street tree and streetscape plan.



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COMMUNITY PARKING DISTRICT
Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

CHART OF ACCOUNTS	CDP Funds	Other Funds	Total
Ordinary Income/Expense			
Income			
CPD	22,048	1,589,000	1,611,048
Other (e.g. Sale of Parking Cards)	0	0	0
Total Income	22,048	1,589,000	1,611,048
Expense			
Personnel	0	0	0
Executive Director	5,000	28,000	33,000
Administrative Assistant	3,000	19,000	22,000
Fica/R Expense	0	0	0
Health Insurance	0	1,500	1,500
Total Personnel	8,000	48,500	56,500
Operating			
Rent - Office	1,200	3,000	4,200
Telephone/Fax/Cell/Internet	0	1,300	1,300
Mtngs/Conf/Dues/Subscriptions	0	0	0
Printing	0	0	0
Insurance		1,000	
Insurance-Workers Comp	0	0	0
Total Insurance	0	5,300	5,300
Postage	0	0	0
Audit	0	0	0
Accounting Services	0	2,500	2,500
Office Supplies	0	0	0
Specify Other Expense	0	0	0
Total Operating	1,200	12,100	13,300
Outreach/Promotion			
Newsletter	1,200	5,000	6,200
Marketing (Web Site, Brochure)	800	2,500	0
Specify Other	0	0	0
Total Outreach/Promotion	2,000	7,500	9,500
Contracts			
Contractor 1	0	0	0
Contractor 2	0	0	0
Total Contracts	0	0	0
Program / Reserve	10,848	1,065,210	0
Contingency	0	0	0
Total Expense	11,200	0	11,200
Net Ordinary Income	10,848	1,589,000	1,599,848
Net Income	\$22,048	\$1,589,000	\$1,611,048

COMMUNITY PARKING DISTRICT
Activities/Program Budget Template

PROPOSED ACTIVITIES/PROGRAMS BUDGET FY 2009

ACTIVITIES/PROGRAMS	CDP Funds	Other Funds	Total
25th Street Renaissance Project	22,048	1,589,000	1,622,048
Management & oversight of Phase I			
Total	\$22,048	\$1,589,000	\$1,611,048

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DOWNTOWN COMMUNITY PARKING DISTRICT

DOWNTOWN COMMUNITY PARKING DISTRICT ANNUAL REPORT

Since the inception of the Downtown Community Parking District, Centre City Development Corporation ("Corporation") has implemented the activities of the Downtown Community Parking District. Downtown Community Parking District revenues, combined and leveraged with tax increment revenues, have contributed to the development of 2,000 new downtown public parking spaces since 1997. A 500 space public parking facility (Park It On Market) has been operating since January 2001. A temporary 187 space public surface parking lot (7th & Market Streets) and a temporary 75 space public surface parking lot (11th & Market Streets) were created. In a joint public/private development at the former Walker Scott site on Broadway, 270 public parking spaces have been created. The 1,230 space public/private 6th and K Parkade opened to the public in August 2004. The Corporation has also fostered the mission of the Comprehensive Downtown Parking Plan (which is currently being updated), which calls for convenient, affordable, and long-term public parking solutions by:

- \$ Implementing a Way Finding signage program throughout the downtown area.
- \$ Installation of 699 parking meters to increase turnover of parking and provide a better use of on-street parking to businesses.
- \$ Constructing Phase One of the India Street Improvements increasing neighborhood parking by converting parallel parking spaces to angled or diagonal parking spaces on the east side of the street.
- \$ Completing Residential Permit Parking studies for Little Italy and Cortez Hill which evaluated and documented the need for and appropriateness of residential parking permits in these downtown neighborhoods.
- \$ Implementing the Cortez Hill Residential Permit Parking Program which was approved and adopted by City Council on October 21, 2003 (R-298526).
- \$ Completing an inventory of public and private parking in downtown, which found that there are approximately 59,700 spaces available, and an approximate additional 8,033 spaces were under consideration. Since that study, approximately 6,333 of those 8,033 have become available for use.
- \$ A Parking Meter Reloading Terminal has been purchased by the Corporation and has been implemented in the Downtown Information Center.

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- \$ Actively participating in the Downtown Community Parking District's Parking and Mobility Task Force and the City Manager's Parking Task Force which were combined to become the Parking Advisory Committee.
- \$ Actively participating in the Downtown Parking Management Group (DPMG) which was formed to oversee and manage the parking needs of downtown. The DPMG consists of community members and provides input to the overall implementation of Downtown Community Parking District's parking programs. Currently, the DPMG is testing ways to increase utilization of parking meters by varying the rates and times of the meters to encourage more utilization. DPMG is also working on the Parking Meter New Technology Test program in conjunction with the City.
- \$ Currently working with City staff to fund the acquisition of 125 New Technology Meters which will be purchased and maintained by the City. Fifty of these meters are currently installed and an additional 75 new meters will be purchased in Fiscal Year 2008 and Fiscal Year 2009.
- \$ Having contributed to the purchase of two vintage trolleys, along with the San Diego Vintage Trolley and Metropolitan Transit System, to be run on trolley lines downtown.
- \$ Developed the Park It On Market parking facility containing 500 parking spaces in six levels. The facility is located on the north side of Market Street between Sixth and Seventh Avenues and opened in January 2001. Park It On Market also has 2,300 square feet of retail space at the ground level. This parking facility serves the Gaslamp Quarter and East Village. In 1999, the Redevelopment Agency issued \$12.1 million of parking revenue bonds to fund the construction of Park It On Market. Net operating revenues from this parking facility, parking district revenues and certain subordinate tax increment revenues from the Centre City Redevelopment Project Area, secure the bonds. Revenues from the facility continue to improve each year with gross parking revenues of approximately \$2.4 million for Fiscal Year 2007 with a net income after debt of \$786,673. To date, approximately \$1.4 million in Parking District Funds have been spent on the design and construction cost, as well as to service the debt.
- \$ Developed 6th & K Parkade parking facility which opened to the public on August 25, 2004. This structure contains 1,230 spaces in seven levels and is located on the full block bounded by Sixth and Seventh Avenues and "K" and "L" Streets. This parking facility serves the Gaslamp Quarter, East Village, Convention Center and the adjacent Petco Park. The project is a public/private venture between the Redevelopment Agency and JMI Realty with JMI Realty contributing approximately \$4 million towards the design and construction costs. A total of 1,000 above grade parking spaces serve the public and a total of 230 basement-level spaces serves the Omni Hotel located south of "L" Street. The private portion of this venture contains 15,000 square feet of retail space on the ground level of the structure. Approximately \$7 million of tax increment and/or tax increment bond proceeds were used to acquire the site. In January

acquire the site. In January 2003, the Redevelopment Agency issued \$20.1 million of subordinate parking bonds to fund the construction of the 6th & K Parkade. The bonds are secured by net operating revenues from this parking facility, the Park It On Market parking facility, to the extent available, parking district revenues and certain subordinate tax increment revenues from the Centre City Redevelopment Project Area. While this parking facility was under construction, the debt service on this facility was paid entirely from parking district revenues. For Fiscal Year 2007 the garage had gross parking revenues of approximately \$2.2 million with a net operating loss of \$44,566 after debt of service. To date, approximately \$3.7 million in Parking District funds have been spent for the design and constructions cost, as well as to service the debt. For Fiscal Year 2009, \$1.5 million of Parking District funds are being pledged for debt service.

- \$ Developing the Corporation website (www.ccdc.com) providing information on parking opportunities in the downtown area, including a comprehensive map of the approximate 60,000 downtown parking spaces.

The Corporation continues to implement parking programs in the Downtown Community Parking District through a variety of other ongoing projects such as those described below.

- \$ The development of a 630 space public parking facility located at 7th Avenue and Market Street (7th & Market). The 7th & Market parking facility will provide additional parking spaces to be located on the 55,000 square foot site owned by the Redevelopment Agency, bounded by Market Street and Seventh, Eighth and Island Avenues. A developer has been selected for the mixed use development on this site and negotiations are currently underway.
- \$ Street improvements within Cortez Hill with a vision to increase parking supply by converting parallel parking spaces to angled/diagonal, installing additional parking meters and revising the current street circulation patterns from two-way to one-way in the next fiscal year.
- \$ Facilitating the sharing of private parking for public use and developing a community-based parking program in Little Italy.
- \$ Preparation of several studies including a Transit Study, Shuttle Study, and the update to the Comprehensive Downtown Parking Plan. Wilbur Smith & Associates has been selected to update the Parking Plan and it is expected to be complete in summer of 2008.
- \$ Implement several district-wide public improvements.
- \$ Pledged \$1.5 million to the construction of 27 public parking spaces located in Cortez Hill at the Cedar Gateway project.
- \$ Land acquisition for future parking facilities.

000408

Currently, the Downtown Community Parking District revenues are committed to the debt service for the Parking Revenue Bonds for Park It On Market North and the Subordinate Parking Bonds for 6th & K Parkade. Additional bonds are contemplated for the construction of a 7th & Market parking facility for the public parking facility that will be publicly owned by the Agency. It is anticipated that the Downtown Community Parking District revenues will be pledged for debt service on any parking bond issue.

000409

CENTRE CITY DEVELOPMENT CORP.
DOWNTOWN COMMUNITY PARKING DISTRICT
Parking Meter Revenues Budget Distribution
(In Thousands)

FY 09 Parking Meter Revenue

Current Year Allocation	1,500	(1)
Unencumbered Prior Year Allocations	1,371	
Total Parking Meter Revenue	2,871	

Bond Pledge and Potential Parking Projects

Seventh & Market	1,210
New Meter Technology	1,000
Parking District Activities	100
Generic Parking	100
Wayfinding Signs	89
Cortez (Coach Bus Study)	25
Little Italy	204
<i>Downtown Shuttle</i>	50
Comprehensive Parking Plan	7
Area Wide Public Improvements	86
Total Expenditures	2,871

(1) If not used to fund parking garage debt service, may be utilized for projects listed above.

RESOLUTION NUMBER R-

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO: 1) APPROVING THE IMPLEMENTATION PLANS AND BUDGETS FOR THE FY2009 COMMUNITY PARKING DISTRICT PROGRAM; 2) TRANSFERRING FUNDS FROM THE GENERAL FUND TO THE COMMUNITY PARKING DISTRICTS; AND 3) AUTHORIZING MAYOR TO EXECUTE SPECIFIED OPERATING AGREEMENTS FOR THE COMMUNITY PARKING DISTRICTS.

WHEREAS, on March 4, 1997, the City Council [Council] adopted City Council Policy 100-18 (which was later amended on November 15, 2005), in which the Council established the "Community Parking District Program," which allows communities, with the approval of the Council, to implement parking solutions in neighborhoods that face serious parking challenges; and

WHEREAS, the City currently has six Community Parking Districts located in the following communities: Downtown, Uptown, Mid-City, La Jolla, Old Town, and Pacific Beach; and

WHEREAS, each Community Parking District [CPD] has a designated Advisory Board (with the exception of the Mid-City CPD, which was established with three co-Advisory Boards), responsible for developing an Implementation Plan, managing CPD funds, and fulfilling the community's parking goals as stated in its respective Implementation Plan; and

WHEREAS, CPD funds are dedicated for improvements and activities that increase the availability, supply, and effective use of parking to residents, visitors, and employees in those communities where parking meters are located; and

WHEREAS, pursuant to Council Policy 100-18, each CPD is authorized to retain forty-five percent of new parking meter revenues collected within its boundaries; and

WHEREAS, only three of the six existing CPD's (Downtown, Uptown, and Mid-City) currently generate parking meter revenues within their boundaries, and therefore, may retain forty-five percent of the parking meter revenues collected within their respective boundaries;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the FY2009 Implementation Plan for the Downtown Community Parking District, and the FY2009 Implementation Plans and Budgets for the Uptown and Mid-City Community Parking Districts are hereby approved. A copy of each is attached to the Executive Summary on file with the Office of the City Clerk as Report No. _____.
2. That the City Auditor and Comptroller is authorized to transfer parking meter revenues in an amount not to exceed \$2,276,892 from General Fund 100 to the Community Parking District [CPD] Funds, contingent upon certification of funds availability by the City Auditor and Comptroller, as follows: \$1,476,280 to the Downtown CPD Fund (Fund No. 70302); \$595,487 to the Uptown CPD Fund (Fund No. 70303); \$91,281 to the Mid-City CPD Fund (Fund No. 70304); and \$113,844 to the CPD Program Administration Costs Fund (Fund No. 70301).
3. That the City Auditor and Comptroller is authorized to appropriate \$3,693,379 for the operation of the FY2009 CPD Program in the Uptown CPD (Fund No. 70303) and \$863,305 for operation of the FY2009 CPD Program in the Mid-City CPD (Fund No. 70304), contingent upon certification of funds availability by the City Auditor and Comptroller; less any FY2008

agreement expenditures incurred in FY2008 not already deducted from each of these CPD Funds, and as increased or reduced to reflect actual parking meter revenues collected in FY2008.

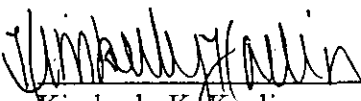
4. That the City Auditor and Comptroller is authorized to appropriate and expend \$4,555,797 from the Downtown CPD Fund (Fund No. 70302) for the operation of the FY2009 CPD Program in the Downtown CPD, contingent upon certification of funds availability by the City Auditor and Comptroller; less any FY2008 agreement expenditures incurred in FY2008 not already deducted from this CPD Fund, and as increased or reduced to reflect actual parking meter revenues collected in FY2008.

5. That the City Auditor and Comptroller is authorized to appropriate and expend an amount not to exceed \$113,844 from the CPD Program Administration Costs Fund (Fund No. 70301) for the City's administration of the CPD Program, contingent upon certification of funds availability by the City Auditor and Comptroller.

6. That the Mayor or his designee is authorized to execute the FY2009 Operating Agreements with the following associations for the operation of the FY2009 CPD program in the Uptown and Mid-City Community Parking Districts. A copy of each agreement is on file with the City Clerk as follows:

<u>Association</u>	<u>CPD</u>	<u>Document Number</u>
Uptown Partnership, Inc.	Uptown	RR-_____
El Cajon Blvd. Business Improvement Association	Mid-City	RR-_____
Greater Golden Hill Community Development Corp.	Mid-City	RR-_____
University Heights Community Development Corp.	Mid-City	RR-_____

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly K. Kaelin
Deputy City Attorney

KKK:bas:nda
05/20/08
07/10/08Cor.Copy
Or.Dept: CP&CI
R-2008-1089
MMS #6438

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

CALCULATIONS FOR FY 2009 CPD ALLOCATIONS

	Annual Allocation	Admin	Downtown	Uptown	Mid-City
Fund Number		70301	70302	70303	70304
Percentage of Total Meters			68.25%	27.53%	4.22%
Cash In Treasury (A)			3,079,517	3,097,892	772,024
FY2009 Allocation (B)	2,276,892	113,844	1,476,280	595,487	91,281
TOTAL			\$ 4,555,797	\$ 3,693,379	\$ 863,305

(A) Per Amris report dated 5/19/08 cash in treasury is a carry over amount from accumulation of monthly meter revenues

(B) Administrative portion is fixed. District allocations are weighted based on number of meters within the district.

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SAN DIEGO, CA

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- 1.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE II - EFFECTIVE DATE; TERM OF AGREEMENT

- 2.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2008 and continue for one year until June 30, 2009, unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 This Agreement may be extended for up to ninety additional calendar days so long as an amendment is made in writing and signed by both Parties and is made in compliance with all laws, policies, regulations relating thereto.

ARTICLE III - CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 3.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 3.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.
- 3.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise.
- 3.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE IV - INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 4.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 4.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 4.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE V - OBLIGATIONS OF CONTRACTOR

- 5.1 Contractor shall perform the services described in the Scope of Services which is included in the Implementation Plan, in accordance with the Plan Budget and all other terms and conditions of this Agreement.
- 5.2 The Scope of Services shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VI - PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

6.1 PLAN BUDGET AND EXPENDITURES

- 6.1.1 The Plan Budget shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 6.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities

(including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Implementation Plan and Budget. Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.

6.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget, the Operating Manual, and/or Council Policy 100-18.

6.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

6.2 ADVANCES

6.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$0 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.

6.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$1,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor.

However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

6.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$22,048, as set forth in the Plan Budget. Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

6.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

6.5 **PAYMENT SCHEDULE**

6.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.

6.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.

6.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.

6.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.

- 6.5.5 Any expenditure contained in the report documenting activities, income, and expenditures described in the preceding subsection that is not consistent with the Plan Budget, or is not supported with proper documentation as described herein, shall be considered an ineligible expenditure.
- 6.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures, less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time, and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.
- 6.5.7 Notwithstanding the "Advance" section herein, the City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement.,

6.6 DIRECT PAYMENTS

- 6.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 6.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 6.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XIV below.

- 6.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services and Plan Budget.

Contractor shall account for Plan Revenue separately. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 6.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 16.9 below.

ARTICLE VII - SUSPENSION AND TERMINATION

7.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS

7.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

7.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

7.2 TERMINATION FOR ANY REASON

- 7.2.1 Notwithstanding the Term of this Agreement, City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.
- 7.2.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.3 TERMINATION FOR CURABLE DEFAULT

- 7.3.1 Except as provided in Section 7.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 7.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.
- 7.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.4 TERMINATION FOR INCURABLE DEFAULT

- 7.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:
 - a) Contractor makes material misrepresentations in regard to information

furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;

- b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
- c) Contractor misappropriates funds;
- d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

7.4.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.5 **CONTINUING RESPONSIBILITIES.** If this Agreement is terminated:

- a) Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- b) Contractor, by accepting payment for completion, discharges City of all City's payment obligations and liabilities under this Agreement.

7.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

7.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and City elects not to enter into a subsequent agreement with Contractor for the management of the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement; and
- b) the Annual Report, in accordance with Contractor's specific obligations enumerated herein.

ARTICLE VIII - INSURANCE

8.1 **CONTRACTOR'S DUTY TO MAINTAIN INSURANCE.** At all times during this Agreement, Contractor shall maintain and comply with the insurance requirements set forth in this Article. Contractor shall provide to City insurance certificates reflecting evidence of all insurance coverage required under this article within thirty days of the Effective Date. Notwithstanding any provision of this Agreement to the contrary, Contractor's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, City shall be permitted to suspend payments during such default period.

8.2 **INSURANCE REQUIREMENTS.** Contractor shall deliver to City a current certificate of insurance for:

- 8.2.1 Commercial General Liability [CGL] Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
- 8.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- 8.2.3 Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). The Workers' Compensation policy shall be endorsed to expressly

provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

- 8.3 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in the CGL and the Automobile Liability Insurance.
- 8.4 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development Department.
- 8.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.
- 8.6 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Contractor and must be disclosed and acceptable to City at the time evidence of insurance is provided.
- 8.7 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.8 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.
- 8.9 **Contractor's Liability Not Limited to Insurance Coverage.** Notwithstanding any other provision in this Agreement, Contractor's liability shall not be deemed limited in any way to the insurance coverage required in this Article.

ARTICLE IX - INDEMNIFICATION

- 9.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, without limitation, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or

indirectly connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required whether or not such work or services are authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. Contractor's obligations under this section shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay City for all costs related thereto, including, without limitation, attorney's fees and costs.

- 9.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article or any matter in this Agreement.

ARTICLE X - DATA AND RECORDS

- 10.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 10.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 10.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 10.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration

date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.

10.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.

10.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE XI - AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

11.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.

11.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.

11.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with

Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 11.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

- 11.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.3 OTHER REPORTS

- 11.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.
- 11.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).
- 11.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2009. The report shall be delivered to the City by November 30, 2009.

ARTICLE XII - CONFLICTS OF INTEREST

- 12.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO", attached hereto as Exhibit B.
- 12.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.

- 12.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.
- 12.4 If required, statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.
- 12.5 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 12.6 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 12.7 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 12.8 If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit B. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

**ARTICLE XIII - INFORMAL DISPUTE RESOLUTION;
ATTORNEY'S FEES; MANDATORY ASSISTANCE**

- 13.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the

meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

- 13.2 **ATTORNEY'S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees, in addition to any other award made in such action or proceeding.

13.3 **MANDATORY ASSISTANCE**

- 13.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City's request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.
- 13.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 13.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 13.2 above.

ARTICLE XIV - SUBCONTRACTORS

- 14.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List (which City will forward to EOCP), listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this

Agreement; and

- b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

14.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following: a) a copy of the subcontract, including the scope of work and written statement justifying need for additional Subcontractor services; and b) an updated Subcontractors List.

14.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit B. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

14.4 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections regarding Data and Records, Conflicts of Interest, and Acknowledgment of Independent Contractor Status, and provide as follows:

14.4.1 Subcontractor shall obtain all insurance coverage required in Article VIII of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

14.4.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Article IX of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

14.5 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

14.6 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall

not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XV - ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS

- 15.1 **ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.** Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.
- 15.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XVI - CITY POLICY PROVISIONS

- 16.1 **Nondiscrimination.** Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 16.2 **Compliance with City's Equal Opportunity Contracting Program.** Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor and all of its subcontractors are individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Contractor shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Contractor will take to achieve City's commitment to equal employment opportunities. Contractor shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by

City's Equal Opportunity Contracting Program staff. Contractor's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and City may bar Contractor from participating in City contracts in accordance with San Diego Municipal Code section 22.0801 et. seq..

16.3 **Local Business and Employment.** Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Contractor shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor shall hire qualified local residents and firms whenever feasible.

16.4 **City Employee Participation Policy.** Contractor shall be in default of this Agreement if Contractor employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement. This provision does not apply to members of the City Council.

16.5 **Drug-free Workplace.** Contractor shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

16.5.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and

16.5.2 Establish a drug-free awareness program to inform employees about all of the following:

- a) The dangers of drug abuse in the workplace;
- b) Contractor's policy of maintaining a drug-free workplace;
- c) Any available drug counseling, rehabilitation, and employee-assistance programs; and
- d) The penalties that may be imposed upon employees for drug abuse violations.

16.5.3 Contractor shall include in each of its contracts related to this Agreement language obligating each contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Contractor, and each of its contractors and subcontractors, shall be individually responsible for their own drug-free workplace program.

16.6 **Disabled Access Compliance.** Contractor shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of

Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 16.7 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.
- 16.8 **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.
- 16.9 **Changes or Amendments to Agreement.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be made in compliance with the then current local code, council policy and regulations. If such change does not affect the total payment, the amendment may be made by written agreement signed by both parties. A change which affects total payment provided hereunder, shall be taken to City Council for authorization if the then current threshold dollar amounts require City Council action. Otherwise, the change may be made by written agreement signed by both parties.

ARTICLE XVII - GENERAL PROVISIONS

- 17.1 **Compliance with Law.** Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations.
- 17.2 **No Political Activity.** Contractor shall not use and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term "political activity" shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 17.3 **Open Meetings and Brown Act Compliance.** The Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et. seq. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible

to the public at least 72 hours prior to the meeting. The agenda shall also be sent to every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.

- 17.4 **California Public Records Act.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 17.5 **Confidentiality of Information.** Notwithstanding any other law or provision in this Agreement, all information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City. This section does not apply to publicly known information or records which are subject to the Public Records Act.
- 17.6 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to City:

City of San Diego
Attn: Economic Development Division
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to contractor: Greater Golden Hill Community Development
Corporation
1235 28TH Street
San Diego, CA 92102

Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service, or one business day after deposit with a reliable overnight courier.

- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

- 17.8 **Unavoidable Delay.** If the performance of any act required of City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 17.9 **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 17.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 17.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
- 17.12 **Entire Understanding.** This Agreement contains the entire understanding of the parties. City and Contractor, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.
- 17.13 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 17.14 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval, except as otherwise stated herein.

- 17.15 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 17.16 **Waiver.** A Party's failure to insist upon the strict performance of any of the other Party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The Parties' waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the party making such waiver to constitute a valid and binding waiver. The Parties' delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. The Parties' failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but a Party may at any and all times require the cure of the default.
- 17.17 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.
- 17.18 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. City shall promptly provide notice to Contractor of any new or revised rules and regulations which affect this Agreement.
- 17.19 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 17.20 **Consents, Approvals.** Neither City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.
- 17.21 **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.
- 17.22 **Authority.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing

agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City that such authority is valid, and that such entity is a valid, qualified corporation, in good standing and qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: July 11, 2008

(GREATER GOLDEN HILL COMMUNITY
DEVELOPMENT CORPORATION), a California
non-profit corporation

BY: [Signature]
Name: Kathy Vandenheuvel
Title: President

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____
Name: Hildred Pepper Jr.
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____
Name: Kimberly K. Kaelin
Title: Deputy City Attorney

EXHIBIT A

IMPLEMENTATION PLAN AND BUDGET

Greater Golden Hill Community Development Corporation

1235 28th Street - San Diego, California 92102

Ph: (619) 696-9992 Fax (619) 696-6048 www.goldenhillcdc.org

Greater Golden Hill Parking Meter District

Greater Golden Hill Community Development Corporation
2008-2009 Scope of Services

In accordance with the City Council Policy 100-18, the following scopes of services shall be rendered by the Greater Golden Hill Community Development Corporation on behalf of the Mid-City Community Parking District

Planning and Outreach: 25th Street Renaissance Project

The GGHCDC is working directly with the City of San Diego's Capital Improvement Projects Division and Traffic Engineering to implement the following toward the completion of the 25th Street Renaissance Project. This project will result in significant infrastructure improvements that will calm traffic, improve parking, and encourage pedestrian and bicyclist use of a major community thoroughfare. Financing comes primarily from a 1.5 million dollar grant from CalTrans, with additional CDBG funds.

Item 1. Completion of conceptual design

- a. Completion of landscape architecture design for engineering plans that account for added on-street parking and addition of angled on-street parking

Item 2. Community outreach.

- a. Community outreach efforts including stakeholder meetings, public noticing about the project, and website, newsletter, and e-mail coverage of project updates.
- b. Presentation of plans to local community groups including the Greater Golden Hill Planning Committee, South Park Business Group, etc.

Public Improvements: 25th Street Renaissance Project

During the 2008-2009 the Greater Golden Hill Community Development Corporation will begin construction of Phase I of the 25th Street Renaissance Project, between Broadway and B Street.

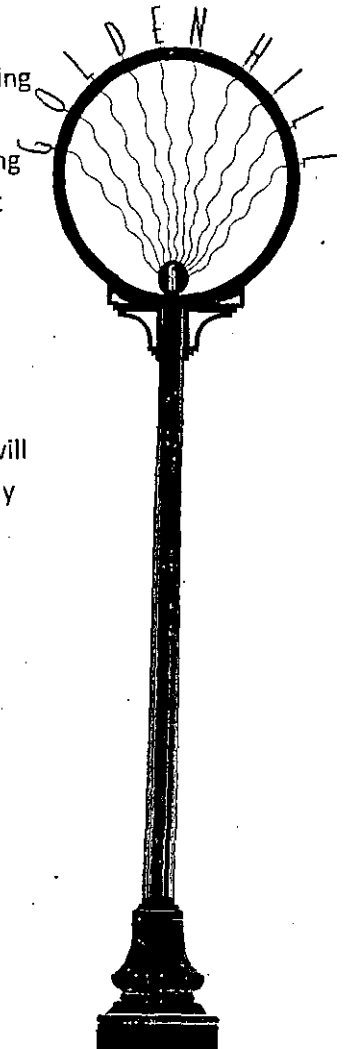
Item 1. Begin implementation of street parking and angled parking plans between B Street and Broadway

Item 2. Begin implementation of traffic and pedestrian signage plans.

Item 3. Begin implementation of sidewalk and curb/gutter plans

Item 4. Implement planned street and pedestrian light plans.

Item 5. Implement street tree and streetscape plan.



COMMUNITY PARKING DISTRICT

Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

CHART OF ACCOUNTS	CDP Funds	Other Funds	Total
Ordinary Income/Expense			
Income			
CPD	22,048	1,589,000	1,611,048
Other (e.g. Sale of Parking Cards)	0	0	0
Total Income	22,048	1,589,000	1,611,048
Expense			
Personnel	0	0	0
Executive Director	5,000	28,000	33,000
Administrative Assistant	3,000	19,000	22,000
Fica/R Expense	0	0	0
Health Insurance	0	1,500	1,500
Total Personnel	8,000	48,500	56,500
Operating			
Rent - Office	1,200	3,000	4,200
Telephone/Fax/Cell/Internet	0	1,300	1,300
Mtngs/Conf/Dues/Subscriptions	0	0	0
Printing	0	0	0
Insurance		1,000	
Insurance-Workers Comp	0	0	0
Total Insurance	0	5,300	5,300
Postage	0	0	0
Audit	0	0	0
Accounting Services	0	2,500	2,500
Office Supplies	0	0	0
Specify Other Expense	0	0	0
Total Operating	1,200	12,100	13,300
Outreach/Promotion			
Newsletter	1,200	5,000	6,200
Marketing (Web Site, Brochure)	800	2,500	0
Specify Other	0	0	0
Total Outreach/Promotion	2,000	7,500	9,500
Contracts			
Contractor 1	0	0	0
Contractor 2	0	0	0
Total Contracts	0	0	0
Program / Reserve	10,848	1,055,210	0
Contingency	0	0	0
Total Expense	11,200	0	11,200
Net Ordinary Income	10,848	1,589,000	1,599,848
Net Income	\$22,048	\$1,589,000	\$1,611,048

PROPOSED ACTIVITES/PROGRAMS BUDGET FY 2009

ACTIVITIES/PROGRAMS	CDP Funds	Other Funds	Total
25th Street Renaissance Project	22,048	1,589,000	1,622,048
Management & oversight of Phase I			
Total	\$22,048	\$1,589,000	\$1,611,048

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the

matter.

(d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.

(e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.

(f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.
2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12-month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be

obtained.

- ▶ Present price proposal information to full board for approval of contract or transaction.
- ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:

- ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
- ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
- ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
- ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
- ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND UPTOWN
PARTNERSHIP, INC. FOR OPERATION OF THE
UPTOWN COMMUNITY PARKING DISTRICT**

This Agreement [Agreement] is entered into by the City of San Diego, a California municipal corporation [City] and **UPTOWN PARTNERSHIP, INC.** [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City has established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council has designated specific geographic areas (Uptown Community Plan Area, Hillcrest Business Improvement District, And Mission Hills Business Improvement District) as the Uptown Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289521, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2009 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 1.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 1.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in the Implementation Plan and Budget attached hereto as Exhibit A.
- 1.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.

- 1.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE II - EFFECTIVE DATE; TERM OF AGREEMENT

- 2.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2008 and continue for one year until June 30, 2009, unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 This Agreement may be extended for up to ninety additional calendar days so long as an amendment is made in writing and signed by both Parties and is made in compliance with all laws, policies, regulations relating thereto.

ARTICLE III - CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 3.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 3.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.
- 3.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise.
- 3.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative *ninety calendar days prior to the date of the change*, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE IV - INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 4.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 4.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 4.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE V - OBLIGATIONS OF CONTRACTOR

- 5.1 Contractor shall perform the services described in the Scope of Services which is included in the Implementation Plan, in accordance with the Plan Budget and all other terms and conditions of this Agreement.
- 5.2 The Scope of Services shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VI - PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

6.1 PLAN BUDGET AND EXPENDITURES

- 6.1.1 The Plan Budget shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 6.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities

(including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Implementation Plan and Budget. Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.

- 6.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget, the Operating Manual, and/or Council Policy 100-18.
- 6.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

6.2 ADVANCES

- 6.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$90,000 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.
- 6.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$25,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor.

However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

6.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$3,693,379, as set forth in the Plan Budget. Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

6.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

6.5 **PAYMENT SCHEDULE**

6.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$100,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.

6.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$30,000.

6.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.

6.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.

- 6.5.5 Any expenditure contained in the report documenting activities, income, and expenditures described in the preceding subsection that is not consistent with the Plan Budget, or is not supported with proper documentation as described herein, shall be considered an ineligible expenditure.
- 6.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures, less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time, and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.
- 6.5.7 Notwithstanding the "Advance" section herein, the City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement..

6.6 DIRECT PAYMENTS

- 6.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 6.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 6.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XIV below.
- 6.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services and Plan Budget.

Contractor shall account for Plan Revenue separately. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 6.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 16.9 below.

ARTICLE VII - SUSPENSION AND TERMINATION

7.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS

7.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

7.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

7.2 TERMINATION FOR ANY REASON

7.2.1 Notwithstanding the Term of this Agreement, City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.

7.2.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds

from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.3 TERMINATION FOR CURABLE DEFAULT

- 7.3.1 Except as provided in Section 7.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 7.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.
- 7.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.4 TERMINATION FOR INCURABLE DEFAULT

- 7.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:
 - a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
 - b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
 - c) Contractor misappropriates funds;
 - d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

and/or

- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

7.4.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.5 CONTINUING RESPONSIBILITIES. If this Agreement is terminated:

- a) Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- b) Contractor, by accepting payment for completion, discharges City of all City's payment obligations and liabilities under this Agreement.

7.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

7.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and City elects not to enter into a subsequent agreement with Contractor for the management of the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the

termination date of this Agreement; and

- b) the Annual Report, in accordance with Contractor's specific obligations enumerated herein.

ARTICLE VIII - INSURANCE

- 8.1 **CONTRACTOR'S DUTY TO MAINTAIN INSURANCE.** At all times during this Agreement, Contractor shall maintain and comply with the insurance requirements set forth in this Article. Contractor shall provide to City insurance certificates reflecting evidence of all insurance coverage required under this article within thirty days of the Effective Date. Notwithstanding any provision of this Agreement to the contrary, Contractor's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, City shall be permitted to suspend payments during such default period.
- 8.2 **INSURANCE REQUIREMENTS.** Contractor shall deliver to City a current certificate of insurance for:
 - 8.2.1 Commercial General Liability [CGL] Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - 8.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
 - 8.2.3 Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). The Workers' Compensation policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.
- 8.3 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in the CGL and the Automobile Liability Insurance.
- 8.4 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development

Department.

- 8.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.
- 8.6 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Contractor and must be disclosed and acceptable to City at the time evidence of insurance is provided.
- 8.7 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.8 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.
- 8.9 **Contractor's Liability Not Limited to Insurance Coverage.** Notwithstanding any other provision in this Agreement, Contractor's liability shall not be deemed limited in any way to the insurance coverage required in this Article.

ARTICLE IX - INDEMNIFICATION

- 9.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, without limitation, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or indirectly connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required whether or not such work or services are authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. Contractor's obligations under this section shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay City for all costs related thereto, including,

without limitation, attorney's fees and costs.

- 9.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article or any matter in this Agreement.

ARTICLE X - DATA AND RECORDS

- 10.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 10.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 10.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 10.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.
- 10.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the

originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.

- 10.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE XI - AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 11.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.

11.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.

11.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of

Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

11.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.3 **OTHER REPORTS**

11.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

11.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

11.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2009. The report shall be

delivered to the City by November 30, 2009.

ARTICLE XII - CONFLICTS OF INTEREST

- 12.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO", attached hereto as Exhibit B.
- 12.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 12.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.
- 12.4 If required, statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.
- 12.5 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 12.6 Contractor shall establish, and make known to its agents and employees,

appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

- 12.7 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 12.8 If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit B. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

ARTICLE XIII - INFORMAL DISPUTE RESOLUTION; ATTORNEY'S FEES; MANDATORY ASSISTANCE

- 13.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.
- 13.2 **ATTORNEY'S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees, in addition to any other award made in such action or proceeding.
- 13.3 **MANDATORY ASSISTANCE**
- 13.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City's request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

- 13.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 13.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 13.2 above.

ARTICLE XIV - SUBCONTRACTORS

- 14.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List (which City will forward to EOCP), listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.
- 14.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following: a) a copy of the subcontract, including the scope of work and written statement justifying need for additional Subcontractor services; and b) an updated Subcontractors List.
- 14.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit B. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.
- 14.4 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections regarding Data and Records, Conflicts of Interest, and Acknowledgment of Independent Contractor Status, and provide as follows:
- 14.4.1 Subcontractor shall obtain all insurance coverage required in Article VIII of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in

connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

14.4.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Article IX of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

14.5 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

14.6 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XV - ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS

15.1 **ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.**

Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.

15.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XVI - CITY POLICY PROVISIONS

16.1 **Nondiscrimination.** Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities

pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 16.2 **Compliance with City's Equal Opportunity Contracting Program.** Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor and all of its subcontractors are individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Contractor shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Contractor will take to achieve City's commitment to equal employment opportunities. Contractor shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by City's Equal Opportunity Contracting Program staff. Contractor's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and City may bar Contractor from participating in City contracts in accordance with San Diego Municipal Code section 22.0801 et. seq..
- 16.3 **Local Business and Employment.** Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Contractor shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor shall hire *qualified local residents and firms whenever feasible.*
- 16.4 **City Employee Participation Policy.** Contractor shall be in default of this Agreement if Contractor employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement. This provision does not apply to members of the City Council.
- 16.5 **Drug-free Workplace.** Contractor shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 16.5.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are pro-

hibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and

16.5.2 Establish a drug-free awareness program to inform employees about all of the following:

- a) The dangers of drug abuse in the workplace;
- b) Contractor's policy of maintaining a drug-free workplace;
- c) Any available drug counseling, rehabilitation, and employee-assistance programs; and
- d) The penalties that may be imposed upon employees for drug abuse violations.

16.5.3 Contractor shall include in each of its contracts related to this Agreement language obligating each contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Contractor, and each of its contractors and subcontractors, shall be individually responsible for their own drug-free workplace program.

16.6 **Disabled Access Compliance.** Contractor shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

16.7 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.

16.8 **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

16.9 **Changes or Amendments to Agreement.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be made in compliance with the then current local code, council policy and regulations. If such change does not affect the total payment, the amendment may be made by written agreement signed by both parties. A change which affects total payment provided hereunder,

shall be taken to City Council for authorization if the then current threshold dollar amounts require City Council action. Otherwise, the change may be made by written agreement signed by both parties.

ARTICLE XVII - GENERAL PROVISIONS

- 17.1 **Compliance with Law.** Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations.
- 17.2 **No Political Activity.** Contractor shall not use and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term "political activity" shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 17.3 **Open Meetings and Brown Act Compliance.** The Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et. seq. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.
- 17.4 **California Public Records Act.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 17.5 **Confidentiality of Information.** Notwithstanding any other law or provision in this Agreement, all information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City. This section does not apply to publicly known information or records which are subject to the Public Records Act.
- 17.6 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to City:

City of San Diego
Attn: Economic Development Division
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to contractor: UPTOWN PARTNERSHIP, INC.
3108 Fifth Avenue, Suite B
San Diego, CA 92103

Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service, or one business day after deposit with a reliable overnight courier.

- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 17.8 **Unavoidable Delay.** If the performance of any act required of City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 17.9 **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 17.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 17.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
- 17.12 **Entire Understanding.** This Agreement contains the entire understanding of the parties. City and Contractor, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement.

Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.

- 17.13 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 17.14 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval, except as otherwise stated herein.
- 17.15 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 17.16 **Waiver.** A Party's failure to insist upon the strict performance of any of the other Party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The Parties' waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the party making such waiver to constitute a valid and binding waiver. The Parties' delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. The Parties' failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but a Party may at any and all times require the cure of the default.
- 17.17 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. City shall promptly provide notice to Contractor of any new or revised rules and regulations which affect this Agreement.
- 17.18 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

- 17.19 **Consents, Approvals.** Neither City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.
- 17.20 **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

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resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City that such authority is valid, and that such entity is a valid, qualified corporation, in good standing and qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: 7-14-08

(UPTOWN PARTNERSHIP, INC.), a California non-profit corporation

BY: Cindy Seem

Name: Cindy Lehman

Title: President

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: Hildred Pepper Jr.

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: Kimberly K. Kaelin

Title: Deputy City Attorney

EXHIBIT A

IMPLEMENTATION PLAN AND BUDGET

B. SCOPE OF SERVICES | PROGRAM BUDGET FY 2008-09

1. SCOPE OF SERVICES

- a. In accordance with City Council Policy 100-18, Uptown Partnership, Inc. shall render the following Scope of Services on behalf of the Uptown Community Parking District. Allocations for these services are in the Program Budget below.
- b. The Scope of Services for Uptown Community Parking District is comprised of elements of the Program Budget:
 - Studies;
 - Projects;
 - Community Relations;
 - Capital Projects Financing; and
 - Contingency Financing.
- c. The remainder of the Program Budget falls into two categories – Governance and Operations – which support the business and management activities necessary to fulfill the Scope of Services.

2. PROGRAM BUDGET CONTEXT

- a. The Program Budget reflects a work planning process conducted by the staff and Board of Directors of Uptown Partnership, Inc. The first part of this process involves selecting and ranking activities for the coming fiscal year and identifying possibilities for the future. The second part entails budgeting for the personnel, consulting, construction, and cash outlays associated with these activities.
- b. During the fiscal year, Uptown Partnership, Inc. may adjust its priorities within its work plan and program budget to take advantage of unforeseen factors such as income generation, funding availability, and support from political leaders, City staff, and the community.
- c. Studies conducted in one fiscal year will result in projects done in the following fiscal year, and so on. Priorities may change as conditions change; however, a significant benefit of planning ahead is to maintain an excellent return on investment (ROI).

3. DETAILED PROGRAM BUDGET AND ACTIVITIES – NEXT PAGE

ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UPI staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total GPD funds
STUDIES [Consultants]	303,700	60,800	364,500	-78,700	285,800
Uptown Parking and Mobility Update Conduct comprehensive analysis of meter use and on-street parking patterns in the context of community land uses and traffic in Uptown; Prepare recommendations to optimize usability of public parking; Review the feasibility of siting a parking garage in central Hillcrest; Develop an agreement with the City of San Diego for investing meter revenues to stimulate private creation of public parking	150,000	37,510	187,510	0	187,510
Uptown Community Plan Update Analyze data and policies prepared by the City and its consultant(s) as they relate to parking and mobility; Advise Board of Directors	0	7,980	7,980	0	7,980
Library Shared Parking Design Examine design and feasibility issues and recommend alternatives for optimizing the use of 90 public parking spaces included in the current Mission Hills-Hillcrest Library plans; Timing of this study depends on City progress on building the library, likely not before FY 2010	0	0	0	0	0
Washington Intersections @ 4th & 5th Design Placed "on hold" while the City seeks funding for mobility study of the east-west travel corridor that includes this intersection; When completed, the east-west study will become part of the community plan update and provide updated guidance for improving this intersection	0	0	0	0	0
Normal St: Blaine to Lincoln [DMV project] Examine technical public parking and mobility issues associated with DMV redevelopment plans on Normal Street; Timing of this study depends on DMV progress in planning its redevelopment	15,000	2,440	17,440	0	17,440
Five Points Focused Parking & Traffic Study Redevelopment Agency will provide funding of \$50,000 toward the \$75,000 focused study identified in the 2007 Five Points initial study	75,000	8,480	83,480	-50,000	33,480
Bankers Hill-Park West Streetscape Design Develop streetscape design guidelines in conjunction with the Bankers Hill neighborhood group; Additional funding provided by consultants' \$10,000 pro bono contribution and an \$18,700 grant from County Supervisor Roberts	48,700	1,950	50,650	-28,700	21,950
Uptown Parking Investments Develop specific strategies to invest funds in private developments to provide additional public parking; Project opportunities may include: Scripps-Mercy parking garage, AT&T lot at 635 Robinson, Village Hat Shop, St. Paul's cathedral expansion, DMV redevelopment proposal; Timing depends on private project schedules	15,000	2,440	17,440	0	17,440
PROJECTS [Construction]	408,200	10,740	418,940	-150,000	268,940
Fourth & Quince Improvements Contribute matching funds to City grant application of \$260,000; \$35,000 intended for flashing crosswalk; City receipt of grant funding controls schedule	35,000	1,950	36,950	0	36,950

AGENCIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 UP staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total ICD funds
Washington & Goldfinch Improvements \$168K already transferred to CIP for project; Groundbreaking held in March 2008; Anticipate FY 2009 completion; See also Community Relations - Construction Mitigation	0	0	0	0	0
Washington Intersections @ 4th & 5th Placed "on hold" while the City funds a mobility study of the east-west travel corridor that includes this intersection; When completed, the east-west study will become part of the community plan update and will provide updated guidance for improving this intersection	0	0	0	0	0
Uptown Flashing Crosswalks Install pedestrian-operated flashing crosswalks at three Uptown intersections identified by need and community input	105,000	1,950	106,950	0	106,950
Intersection Improvements Install pedestrian advance and count-down signals and ladder crosswalks at five intersections identified with assistance of Traffic Engineering; Anticipate completion in FY 2008	0	0	0	0	0
Uptown Multi-space Meter Installations Purchase and install multi-space meters in Uptown locations identified by need and community input	90,000	2,930	92,930	0	92,930
Florence School Shared Parking Facilities Fund parking lot improvements required for public use of Florence School parking lot on evenings and weekends; Contribute funding subsidy for shared parking	21,000	1,950	22,950	0	22,950
Normal Street Median: University to Blaine Previous allocation of \$159,250 already transferred into CIP for project; Completion expected in FY 2009; See also Community Relations - Construction Mitigation and Contingency Financing	0	0	0	0	0
Normal Street: Blaine to Lincoln [DMV project] State DMV has stated its intent to redevelop its property on Normal Street, which provides an opportunity to add public parking and reconstruct the adjoining median; Timing depends on DMV schedule, not likely before FY 2010	0	0	0	0	0
Washington-India Street Median Provide bridge funding for initial three years of median maintenance in order to allow Mission Hills BID time to create a Maintenance Assessment District that will assume maintenance funding and responsibilities	7,200	980	8,180	0	8,180
Five Points Capital Improvements Install upgrades identified in 2007 Five Points report; Funding provided by Redevelopment Agency and work done by City Traffic Engineering	150,000	980	150,980	-150,000	980
I-5 Freeway Underpass Improvements at Washington Street Install landscape, sidewalk, and lighting improvements with Caltrans cooperation to improve access and safety between commercial area and trolley station; Timing depends on completion of additional Five Points study (above), likely not before FY 2010	0	0	0	0	0

ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 JPI staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
Bankers Hill-Park West Improvements Install parking and traffic calming and enhancements to improve vehicle and pedestrian movement consistent with streetscape design guidelines; Timing depends on completion of streetscape design guidelines (above), likely not before FY 2010	0	0	0	0	0
COMMUNITY RELATIONS	186,750	69,420	256,170	-168,360	87,810
Parking Card Program Sales and Management Program Assistant sells cards, provides public assistance, manages card program and reseller sales; Sales income goes back into program	168,360	9,560	177,920	-168,360	9,560
Construction Mitigation Staff works with Council offices and BIDs to alleviate public project impacts on neighborhoods	0	12,870	12,870	0	12,870
Utility Art Box program Partnership staff coordinates efforts of volunteer artists and provides art supplies to paint sidewalk utility boxes; Partnership assumes maintenance of painted boxes	7,090	8,100	15,190	0	15,190
Public Awareness Partnership staff prepares newsletter periodically for distribution to 2,200 recipients, maintains current information on website, and provides parking information to public	11,300	9,540	20,840	0	20,840
Community Organizations Liaison Executive Director maintains close working relationships with City staff, community leaders, and political representatives and attends numerous meetings in community	0	28,130	28,130	0	28,130
Uptown Transit Corridor Monitoring Staff Planner coordinates community responses to transit changes proposed by MTS three times per year	0	1,220	1,220	0	1,220
CONTINGENCY FINANCING	39,070	0	39,070	0	39,070
Normal Street Median: University to Blaine Previous allocation of \$149,250 already in City's CIP fund for project, plus \$134,000 in DIF funds	39,070	0	39,070	0	39,070
GOVERNANCE	0	66,550	66,550	0	66,550
Business & Strategy Strategic Planning Fiscal Policies Board Support Legal & Corporate Matters	0	36,680	36,680	0	36,680
Management Office Systems & Equipment Maintenance Staff Work Planning & Assessment	0	29,870	29,870	0	29,870

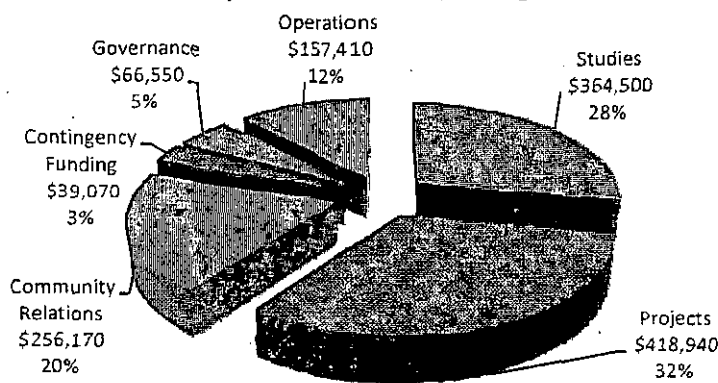
ACTIVITIES/PROGRAMS	FY 2009 monetary outlay	FY 2009 (PP) staff	FY 2009 total outlay	FY 2009 total other funds	FY 2009 total CPD funds
OPERATIONS	157,410	0	157,410	0	157,410
Rent & Utilities	30,710	0	30,710	0	30,710
Insurance	8,990	0	8,990	0	8,990
Payroll Taxes & Benefits	26,310	0	26,310	0	26,310
Services, Supplies, Maintenance & Repairs	62,140	0	62,140	0	62,140
Professional Services	29,260	0	29,260	0	29,260
CONTRACT AMOUNT					3,234,012
TOTALS FY 2009	1,095,130	207,510	1,302,640	-397,060	905,580
CAPITAL PROJECTS FINANCING					2,328,432
Uptown Parking Investments					
Invest funds in projects to provide additional public parking; Project opportunities may include: Scripps-Mercy garage construction; AT&T at 635 Robinson; Village Hat Shop; St. Paul's cathedral expansion; DMV redevelopment project; Timing depends on market opportunities					

NOTE: Except for Governance and Operations, personnel are directly engaged in carrying out CPD programs

Personnel (staff) as percent of CPD contract 6.4%
Administration (governance+operations) as percent of CPD contract 6.9%

Personnel (staff) as percent of total FY outlay 15.9%
Administration (governance+operations) as percent of total FY outlay 17.2%

Expenditures By Program



C. OPERATING BUDGET FY 2008-09

1. OPERATING BUDGET CONTEXT

- a. The operating budget summarizes the expected income received and expenses paid in the coming fiscal year.
- b. Entries are recorded consistently with the QuickBooks chart of accounts that *Uptown Partnership, Inc. has established to maintain its financial records.*
- c. The operating budget assumes that income and expenses will be equal because the source of funding for Uptown Partnership, Inc. is reimbursement of expenditures under the contract to administer the Uptown Community Parking District.
- d. Net Income equals the amount of Capital Projects Financing being accrued to address major capital needs.

2. DETAILS OF OPERATING BUDGET – NEXT PAGE

Operating Budget: Chart of Accounts	FY 2009 CPD Funds	FY 2009 Other Funds	FY 2009 Budget Total
Ordinary Income/Expense			
Income			
4000 · CPD Parking Meter Revenue Allocation	595,490	0	595,490
4600 · Parking Card Sales Income	0	168,360	168,360
4650 · Parking Card Shipping Income	0	930	930
4675 · Other Parking Card Sales	0	0	0
4950 · Interest Income	0	1,300	1,300
4975 · Misc Income (e.g., single-time rebates)	0	2,450	2,450
Total income	595,490	173,040	768,530
Cost of Goods Sold			
5000 · Cost of Goods Sold	0	168,170	168,170
Gross Profit	595,490	4,870	600,360
Expense *			
7001 · Artist Supplies Utility Art Box Program	7,090	0	7,090
7015 · Bank Service Charges	20	0	20
7025 · Computer, Software & Maintenance	9,300	0	9,300
7028 · Credit Card Service Charges	2,780	0	2,780
7040 · Dues and Subscriptions	370	0	370
7050 · Employee Training	590	0	590
7051 · Meetings, Conferences & Seminars	4,570	0	4,570
7060 · Equipment Rental	5,350	0	5,350
7071 · Employee Fiduciary Bond	440	0	440
7073 · General Liability	3,880	0	3,880
7074 · Workers Compensation	2,080	0	2,080
7075 · Directors & Officers Liability	2,590	0	2,590
7080 · Interest & Finance Charges	20	0	20
7095 · Licenses and Permits	190	0	190
7100 · Marketing and Events	1,690	0	1,690
7120 · Miscellaneous Expense	0	0	0
7130 · Office Supplies and Services	4,950	0	4,950
7141 · Accounting & Auditing	19,260	0	19,260
7144 · Legal [\$20K pro bono retainer w/ law firm]	0	0	0
7142 · Graphics Design	10,000	0	10,000
7146 · Outside Contractors (e.g., security, storage)	2,670	0	2,670
7170 · Postage and Shipping	6,060	0	6,060
7180 · Printing and Reproduction	13,480	0	13,480
7190 · Rent	28,080	0	28,080
7230 · Telephone	2,610	0	2,610
7253 · Mileage	300	0	300
7255 · Parking & Transportation	100	0	100
7260 · Utilities	2,630		2,630

Operating Budget Chart of Accounts	FY 2009 CPD Funds	FY 2009 Other Funds	FY 2009 Budget Total
7161 Director's Salary	74,800	0	74,800
7162 Office Wages	130,700	0	130,700
7163 Employee Benefits	10,280	0	10,280
7164 Payroll Tax Expense	16,440	0	16,440
7145 - Planning Consultants (Studies)	303,700	78,700	382,400
Total Expense	667,020	78,700	745,720
Net Ordinary Income	-71,530	-73,830	-145,360
Other Income/Expense			
Other Income			
8100 - Other Income			
Redevelopment Agency Construction Funds		150,000	
Redevelopment Agency Study Grant		50,000	
County Community Projects Grant		18,700	
Consultant Pro Bono Contribution		10,000	
CPD carryover funds	3,234,012	0	3,234,012
Total Other Income	3,234,012	228,700	3,462,712
Other Expense			
9000 - Projects (Construction)	268,940	150,000	418,940
9000 - Contingency: Normal Street Median	39,070	0	39,070
Total Other Expense	308,010	150,000	458,010
Net Other Income	2,926,002	78,700	3,004,702
Total Net Income = Capital Projects Financing	2,854,472	4,870	2,859,342

* Expense: Increases for FY 2009 generally reflect 110% of FY 2008 projected expenditures where available, except insurance & utilities=115%

NOTE: Cash in treasury = \$3,234,012

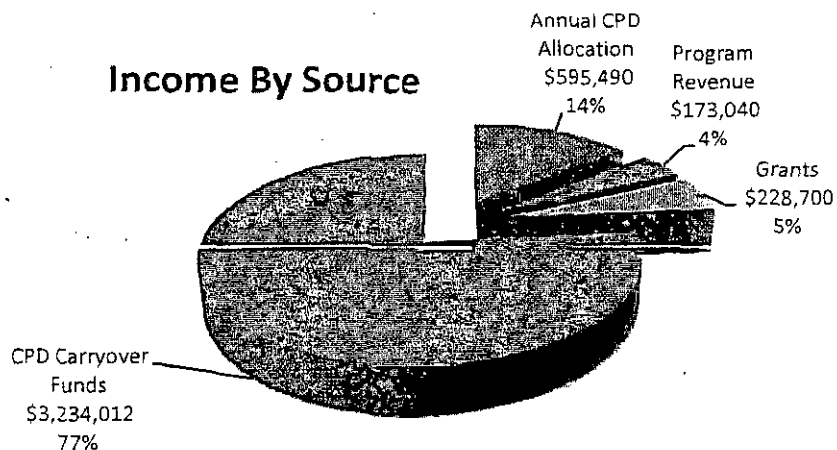


EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.
 - (c) Any membership owned by the interested party abstains from voting on the

matter.

(d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.

(e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.

(f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - No competitive procurement process is required.
2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12-month period:
 - Obtain three written price proposals or demonstrate why three bids could not be

obtained.

- ▶ Present price proposal information to full board for approval of contract or transaction.
- ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:

- ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
- ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
- ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
- ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
- ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01

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7/15/08

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND EL CAJON BOULEVARD
BUSINESS IMPROVEMENT DISTRICT FOR OPERATION OF THE
MID-CITY COMMUNITY PARKING DISTRICT**

This Agreement [Agreement] is entered into by the City of San Diego, a California municipal corporation [City] and El Cajon Boulevard Business Improvement District [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City has established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council has designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement, And City Heights Business Improvement District) as the Mid-City Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289521, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2009 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 1.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 1.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in the Implementation Plan and Budget attached hereto as Exhibit A.
- 1.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.

- 1.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE II - EFFECTIVE DATE; TERM OF AGREEMENT

- 2.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2008 and continue for one year until June 30, 2009, unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 This Agreement may be extended for up to ninety additional calendar days so long as an amendment is made in writing and signed by both Parties and is made in compliance with all laws, policies, regulations relating thereto.

ARTICLE III - CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 3.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 3.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.
- 3.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise.
- 3.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE IV - INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 4.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 4.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 4.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE V - OBLIGATIONS OF CONTRACTOR

- 5.1 Contractor shall perform the services described in the Scope of Services which is included in the Implementation Plan, in accordance with the Plan Budget and all other terms and conditions of this Agreement.
- 5.2 The Scope of Services shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VI - PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

6.1 PLAN BUDGET AND EXPENDITURES

- 6.1.1 The Plan Budget shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 6.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities

(including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Implementation Plan and Budget. Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.

- 6.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget, the Operating Manual, and/or Council Policy 100-18.
- 6.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

6.2 ADVANCES

- 6.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$0 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.
- 6.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$1,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor.

However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

6.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$600,000, as set forth in the Plan Budget. Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

6.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

6.5 **PAYMENT SCHEDULE**

6.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.

6.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.

6.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.

6.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.

- 6.5.5 Any expenditure contained in the report documenting activities, income, and expenditures described in the preceding subsection that is not consistent with the Plan Budget, or is not supported with proper documentation as described herein, shall be considered an ineligible expenditure.
- 6.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures, less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time, and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.
- 6.5.7 Notwithstanding the "Advance" section herein, the City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement,.

6.6 DIRECT PAYMENTS

- 6.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 6.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 6.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
 - a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XIV below.

- 6.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services and Plan Budget.

Contractor shall account for Plan Revenue separately. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 6.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 16.9 below.

ARTICLE VII - SUSPENSION AND TERMINATION

7.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS

7.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

7.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

7.2 TERMINATION FOR ANY REASON

7.2.1 Notwithstanding the Term of this Agreement, City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.

7.2.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds

from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.3 TERMINATION FOR CURABLE DEFAULT

7.3.1 Except as provided in Section 7.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.

7.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.

7.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.4 TERMINATION FOR INCURABLE DEFAULT

7.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:

- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
- b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
- c) Contractor misappropriates funds;
- d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or

- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

7.4.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.5 **CONTINUING RESPONSIBILITIES.** If this Agreement is terminated:

- a) Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- b) Contractor, by accepting payment for completion, discharges City of all City's payment obligations and liabilities under this Agreement.

7.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

7.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and City elects not to enter into a subsequent agreement with Contractor for the management of the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement; and

- b) the Annual Report, in accordance with Contractor's specific obligations enumerated herein.

ARTICLE VIII - INSURANCE

- 8.1 **CONTRACTOR'S DUTY TO MAINTAIN INSURANCE.** At all times during this Agreement, Contractor shall maintain and comply with the insurance requirements set forth in this Article. Contractor shall provide to City insurance certificates reflecting evidence of all insurance coverage required under this article within thirty days of the Effective Date. Notwithstanding any provision of this Agreement to the contrary, Contractor's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, City shall be permitted to suspend payments during such default period.
- 8.2 **INSURANCE REQUIREMENTS.** Contractor shall deliver to City a current certificate of insurance for:
- 8.2.1 Commercial General Liability [CGL] Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
- 8.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- 8.2.3 Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). The Workers' Compensation policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.
- 8.3 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in the CGL and the Automobile Liability Insurance.
- 8.4 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development Department.

- 8.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.
- 8.6 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Contractor and must be disclosed and acceptable to City at the time evidence of insurance is provided.
- 8.7 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.8 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.
- 8.9 **Contractor's Liability Not Limited to Insurance Coverage.** Notwithstanding any other provision in this Agreement, Contractor's liability shall not be deemed limited in any way to the insurance coverage required in this Article.

ARTICLE IX - INDEMNIFICATION

- 9.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, without limitation, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or indirectly connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required whether or not such work or services are authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. Contractor's obligations under this section shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay City for all costs related thereto, including, without limitation, attorney's fees and costs.

- 9.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article or any matter in this Agreement.

ARTICLE X - DATA AND RECORDS

- 10.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 10.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 10.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 10.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.
- 10.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.

- 10.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE XI - AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 11.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.

- 11.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.

- 11.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within

150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 11.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

- 11.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.3 **OTHER REPORTS**

- 11.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

- 11.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

- 11.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2009. The report shall be delivered to the City by November 30, 2009.

ARTICLE XII - CONFLICTS OF INTEREST

- 12.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO", attached hereto as Exhibit B.
- 12.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 12.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.
- 12.4 If required, statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.
- 12.5 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 12.6 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for

private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

- 12.7 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 12.8 If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit B. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

ARTICLE XIII - INFORMAL DISPUTE RESOLUTION; ATTORNEY'S FEES; MANDATORY ASSISTANCE

- 13.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.
- 13.2 **ATTORNEY'S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees, in addition to any other award made in such action or proceeding.
- 13.3 **MANDATORY ASSISTANCE**
- 13.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City's request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

- 13.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 13.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 13.2 above.

ARTICLE XIV - SUBCONTRACTORS

- 14.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List (which City will forward to EOCP), listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.
- 14.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following: a) a copy of the subcontract, including the scope of work and written statement justifying need for additional Subcontractor services; and b) an updated Subcontractors List.
- 14.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit B. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.
- 14.4 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections regarding Data and Records, Conflicts of Interest, and Acknowledgment of Independent Contractor Status, and provide as follows:
- 14.4.1 Subcontractor shall obtain all insurance coverage required in Article VIII of the City's Agreement with Contractor, and shall maintain, in full force and

effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

14.4.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Article IX of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

14.5 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

14.6 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XV - ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS

15.1 **ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.** Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.

15.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XVI - CITY POLICY PROVISIONS

16.1 **Nondiscrimination.** Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status,

national origin, age, marital status, or physical disability in Contractor's activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 16.2 **Compliance with City's Equal Opportunity Contracting Program.** Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor and all of its subcontractors are individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Contractor shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Contractor will take to achieve City's commitment to equal employment opportunities. Contractor shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by City's Equal Opportunity Contracting Program staff. Contractor's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and City may bar Contractor from participating in City contracts in accordance with San Diego Municipal Code section 22.0801 et seq..
- 16.3 **Local Business and Employment.** Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Contractor shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor shall hire qualified local residents and firms whenever feasible.
- 16.4 **City Employee Participation Policy.** Contractor shall be in default of this Agreement if Contractor employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement. This provision does not apply to members of the City Council.
- 16.5 **Drug-free Workplace.** Contractor shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 16.5.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are pro-

hibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and

16.5.2 Establish a drug-free awareness program to inform employees about all of the following:

- a) The dangers of drug abuse in the workplace;
- b) Contractor's policy of maintaining a drug-free workplace;
- c) Any available drug counseling, rehabilitation, and employee-assistance programs; and
- d) The penalties that may be imposed upon employees for drug abuse violations.

16.5.3 Contractor shall include in each of its contracts related to this Agreement language obligating each contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Contractor, and each of its contractors and subcontractors, shall be individually responsible for their own drug-free workplace program.

16.6 **Disabled Access Compliance.** Contractor shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

16.7 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.

16.8 **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

16.9 **Changes or Amendments to Agreement.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be made in compliance with the then current local code, council policy and regulations. If such change does not affect the total payment, the amendment may be made by written agreement signed by both parties. A change which affects total payment provided hereunder,

shall be taken to City Council for authorization if the then current threshold dollar amounts require City Council action. Otherwise, the change may be made by written agreement signed by both parties.

ARTICLE XVII - GENERAL PROVISIONS

- 17.1 **Compliance with Law.** Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations.
- 17.2 **No Political Activity.** Contractor shall not use and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term "political activity" shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 17.3 **Open Meetings and Brown Act Compliance.** The Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et. seq. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.
- 17.4 **California Public Records Act.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 17.5 **Confidentiality of Information.** Notwithstanding any other law or provision in this Agreement, all information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City. This section does not apply to publicly known information or records which are subject to the Public Records Act.
- 17.6 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to City:

City of San Diego
Attn: Economic Development Division
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to contractor: El Cajon Boulevard Business Improvement
District
3727 El Cajon Boulevard
San Diego, CA 92105

Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service, or one business day after deposit with a reliable overnight courier.

- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 17.8 **Unavoidable Delay.** If the performance of any act required of City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 17.9 **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 17.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 17.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

- 17.12 **Entire Understanding.** This Agreement contains the entire understanding of the parties. City and Contractor, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.
- 17.13 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 17.14 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval, except as otherwise stated herein.
- 17.15 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 17.16 **Waiver.** A Party's failure to insist upon the strict performance of any of the other Party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The Parties' waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the party making such waiver to constitute a valid and binding waiver. The Parties' delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. The Parties' failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but a Party may at any and all times require the cure of the default.
- 17.17 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.
- 17.18 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. City shall promptly provide notice to Contractor of any new or revised rules and regulations which affect this Agreement.

17.19 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.20 **Consents, Approvals.** Neither City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.

17.21 **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

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17.22 **Authority.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City that such authority is valid, and that such entity is a valid, qualified corporation, in good standing and qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: 02/12/08

EL CAJON BOULEVARD BUSINESS
IMPROVEMENT DISTRICT, a California non-profit
corporation

BY: Jacquelyn R. O'Connor
Name: Jacquelyn R. O'Connor
Title: President

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____
Name: Hildred Pepper Jr.
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____
Name: Kimberly K. Kaelin
Title: Deputy City Attorney

EXHIBIT A

IMPLEMENTATION PLAN AND BUDGET

the
BOULEVARD
El Cajon Boulevard Business Improvement Association

Mid-City Community Parking District

FY 2009 Scope of Work

Program Objectives

Parking Enhancement

On-Street Parking Adjustments

Continue evaluation of feasibility of adjusting on-street parking to increase available spaces using angle and head-in parking

- Work with City to simplify installation policies
- Identify appropriate locations for angle and/or head-in parking
 - Evaluate street widths and curb cut locations
 - Solicit support from adjacent residents and property owners

Parking Impact Assessment

Evaluate effectiveness of current commercial district on-street and off-street parking utilization to insure efficient use of space

- Identify appropriate locations, if any, for installation of time limited and/or metered parking and oversee installation where supported
- Work with businesses to install or adjust curb markings (red, white, blue, green) as requested and warranted
- Identify feasibility of valet and/or remote parking opportunities for business and/or special event activities and implement as appropriate
- Identify potential off-street parking locations in and adjacent to commercial districts and support increased utilization as necessary

Traffic Calming Feasibility

Identify and recommend locations for use of traffic calming measures to enhance vehicular and pedestrian safety

- Identify locations for crosswalk enhancements and recommend specific types of treatments
- Identify locations for installation of speed indicator devices
- Identify locations for installation of additional pedestrian countdown indicators

Zoning Criteria

Investigate appropriateness of existing commercial zoning regulations relative to off-street parking requirements and recommend changes where warranted

- Evaluate current off-street requirements and recommend adjustments as necessary to improve parking utilization
- Evaluate the use of in-lieu fees to mitigate the impact of required parking regulations on certain desired changes of use

Public Information

Communicate on-going parking enhancement and related activities to stakeholders through various forms of outreach including printed and electronic methods, and attendance at pertinent meetings and workshops

Newsletters - Produce newsletters as needed to affected property owners, residents, and business owners detailing program and project activities

Outreach - Attend community meetings as necessary to communicate program and project activities and to seek feedback from affected stakeholders

Surveys - Produce and distribute resident and business surveys seeking feedback on parking, transit, and pedestrian related activities

Website - Maintain website detailing current status of parking district activities

Pedestrian and Transit Enhancement

Pedestrian Right-of-way Improvements

Evaluate methods of improving pedestrian right-of-way conditions within the commercial districts.

- Identify and implement methods of improving pedestrian safety and security
- Identify and support pedestrian linkages connecting the various pedestrian oriented destinations
- Identify and implement establishment of sidewalk cafes and other methods of actively using the public right-of-way
- Initiate public art activities along and adjacent to the pedestrian right-of way

Transit Enhancement

Evaluate and support methods of enhancing the availability and utilization of public transit

- Meet with SANDAG and MTS as needed to better understand their approaches to transit service and to advocate for enhancements as warranted
- Monitor SANDAG approaches to the development of bus rapid transit service, and advocate for methods to expedite and enhance those services as warranted
- Identify and implement methods of improving the safety, usability, and appearance of transit stops as warranted

Public Improvements

Vehicular Enhancements

- Install angle and head-in parking at identified locations
- Install speed indicator devices at identified locations
- Install parking meters at requested locations
- Close abandoned driveways and install curbs at identified locations

Pedestrian Enhancements

- Install crosswalk upgrades at identified locations
- Install pedestrian countdown indicators at identified locations
- Install public art at identified locations
- Install sidewalk cafes at identified locations

COMMUNITY PARKING DISTRICT PROGRAM

Fiscal Year 2009

Contractor: El Cajon for Mid-City Community Parking District
Mailing Address: 3727 El Cajon Boulevard San Diego, CA 92105
Fiscal Year End: June 30, 2009

El Cajon BIA for Mid-City Parking District: Budget Summary FY09

Expenditure Categories	Total FY09 Organization Budgeted Expenses
Parking Enhancements	
Head-In Parking Assessment	\$12,000
Angle Parking Assessment	\$12,000
Parking Impact Assessment	\$36,000
Traffic Calming Assessment	\$12,000
Zoning/ In-Lieu Fee Criteria	\$12,000
Subtotal	\$84,000
Public Information	
Newsletters	\$12,000
Outreach	\$6,000
Surveys	\$6,000
Website	\$6,000
Subtotal	\$30,000
Pedestrian and Transit Enhancement	
Pedestrian Right-of-Way Improvements	\$36,000
Transit Options	\$36,000
Subtotal	\$72,000
Public Improvements	
24 Crosswalk Enhancements	\$24,000
12 Countdown Indicators	\$24,000
2 Electronic Speed Indicators	\$24,000
6 Driveway Closures	\$60,000
40 Parking Meters	\$36,000
24 Utility Box paintings @ \$500	\$12,000
Subtotal	\$180,000
Administration	
Staff	\$18,000
Technical Assistance	\$24,000
Non-personnel (rent, utilities, supplies, insurance)	\$12,000
Subtotal	\$54,000
Total	\$420,000.00
Contingency	\$40,000.00
Reserve (Future Capital Improvements)	\$140,000.00
GRAND TOTAL	\$600,000.00

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.

- (c) Any membership owned by the interested party abstains from voting on the matter.
- (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
- (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
- (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.
2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12-month period:

- ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.
3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
- ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND UNIVERSITY HEIGHTS
COMMUNITY DEVELOPMENT CORPORATION FOR OPERATION OF THE
UNIVERSITY HEIGHTS COMMUNITY PARKING DISTRICT**

This Agreement [Agreement] is entered into by the City of San Diego, a California municipal corporation [City] and University Heights Community Development Corporation [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City has established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council has designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement, And City Heights Business Improvement District) as the University Heights Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289521, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2009 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 1.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 1.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in the Implementation Plan and Budget attached hereto as Exhibit A.

- 1.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.
- 1.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE II - EFFECTIVE DATE; TERM OF AGREEMENT

- 2.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2008 and continue for one year until June 30, 2009, unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 This Agreement may be extended for up to ninety additional calendar days so long as an amendment is made in writing and signed by both Parties and is made in compliance with all laws, policies, regulations relating thereto.

ARTICLE III - CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 3.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 3.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.
- 3.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise.
- 3.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform

Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE IV - INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 4.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the *direction of the City* concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 4.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section *is grounds for immediate termination of this Agreement, at the sole discretion of the City.* In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 4.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE V - OBLIGATIONS OF CONTRACTOR

- 5.1 Contractor shall perform the services described in the Scope of Services which is included in the Implementation Plan, in accordance with the Plan Budget and all other terms and conditions of this Agreement.
- 5.2 The Scope of Services shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VI - PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

6.1 PLAN BUDGET AND EXPENDITURES

- 6.1.1 The Plan Budget shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 6.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities (including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Implementation Plan and Budget. Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.
- 6.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget, the Operating Manual, and/or Council Policy 100-18.
- 6.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

6.2 ADVANCES

- 6.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$0 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.
- 6.2.2 At the written request of Contractor, the City may, on a monthly basis, provide

parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$MMM per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for *eligible expenditures made in connection with this Agreement*. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

6.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$169,602, as set forth in the Plan Budget. Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

6.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

6.5 **PAYMENT SCHEDULE**

6.5.1 *In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.*

6.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.

- 6.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.
- 6.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.
- 6.5.5 Any expenditure contained in the report documenting activities, income, and expenditures described in the preceding subsection that is not consistent with the Plan Budget, or is not supported with proper documentation as described herein, shall be considered an ineligible expenditure.
- 6.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures, less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time, and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.
- 6.5.7 Notwithstanding the "Advance" section herein, the City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement.

6.6 DIRECT PAYMENTS

- 6.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 6.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to

another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.

6.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:

- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
- b) the subcontract, furnished to the City, complies with the requirements set forth in Article XIV below.

6.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services and Plan Budget.

Contractor shall account for Plan Revenue separately. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

6.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 16.9 below.

ARTICLE VII - SUSPENSION AND TERMINATION

7.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS

7.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

- 7.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

7.2 TERMINATION FOR ANY REASON

- 7.2.1 Notwithstanding the Term of this Agreement, City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.
- 7.2.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.3 TERMINATION FOR CURABLE DEFAULT

- 7.3.1 Except as provided in Section 7.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 7.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.
- 7.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.4 TERMINATION FOR INCURABLE DEFAULT

7.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:

- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
- b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
- c) Contractor misappropriates funds;
- d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

7.4.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

7.5 CONTINUING RESPONSIBILITIES. If this Agreement is terminated:

- a) Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- b) Contractor, by accepting payment for completion, discharges City of all City's payment obligations and liabilities under this Agreement.

7.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

7.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and City elects not to enter into a subsequent agreement with Contractor for the management of the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement; and
- b) the Annual Report, in accordance with Contractor's specific obligations enumerated herein.

ARTICLE VIII - INSURANCE

8.1 **CONTRACTOR'S DUTY TO MAINTAIN INSURANCE.** At all times during this Agreement, Contractor shall maintain and comply with the insurance requirements set forth in this Article. Contractor shall provide to City insurance certificates reflecting evidence of all insurance coverage required under this article within thirty days of the Effective Date. Notwithstanding any provision of this Agreement to the contrary, Contractor's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, City shall be permitted to suspend payments during such default period.

8.2 **INSURANCE REQUIREMENTS.** Contractor shall deliver to City a current certificate of insurance for:

- 8.2.1 Commercial General Liability [CGL] Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
- 8.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and

property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and

8.2.3 **Workers' Compensation Insurance**, as required by the laws of the State of California for all of Contractor's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). The Workers' Compensation policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

- 8.3 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in the CGL and the Automobile Liability Insurance.
- 8.4 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development Department.
- 8.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.
- 8.6 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Contractor and must be disclosed and acceptable to City at the time evidence of insurance is provided.
- 8.7 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.8 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.

- 8.9 **Contractor's Liability Not Limited to Insurance Coverage.** Notwithstanding any other provision in this Agreement, Contractor's liability shall not be deemed limited in any way to the insurance coverage required in this Article.

ARTICLE IX - INDEMNIFICATION

- 9.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, without limitation, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or indirectly connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required whether or not such work or services are authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. Contractor's obligations under this section shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 9.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article or any matter in this Agreement.

ARTICLE X - DATA AND RECORDS

- 10.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 10.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records; documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.

- 10.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices; receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 10.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.
- 10.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.
- 10.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE XI - AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 11.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated

to the Plan by the City.

11.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.

11.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

11.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the

- budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

11.3 OTHER REPORTS

- 11.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.
- 11.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).
- 11.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2009. The report shall be delivered to the City by November 30, 2009.

ARTICLE XII - CONFLICTS OF INTEREST

- 12.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, *including, but not limited to, each of the following:*
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO", attached hereto as Exhibit B.

- 12.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 12.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.
- 12.4 If required, statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.
- 12.5 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 12.6 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 12.7 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 12.8 If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit B. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as

a result of the violation.

**ARTICLE XIII - INFORMAL DISPUTE RESOLUTION;
ATTORNEY'S FEES; MANDATORY ASSISTANCE**

- 13.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.
- 13.2 **ATTORNEY'S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees, in addition to any other award made in such action or proceeding.
- 13.3 **MANDATORY ASSISTANCE**
- 13.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City's request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.
- 13.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 13.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 13.2 above.

ARTICLE XIV - SUBCONTRACTORS

- 14.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List (which City will forward to EOCP), listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.
- 14.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following: a) a copy of the subcontract, including the scope of work and written statement justifying need for additional Subcontractor services; and b) an updated Subcontractors List.
- 14.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit B. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.
- 14.4 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections regarding Data and Records, Conflicts of Interest, and Acknowledgment of Independent Contractor Status, and provide as follows:
- 14.4.1 Subcontractor shall obtain all insurance coverage required in Article VIII of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.
 - 14.4.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Article IX of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

- 14.5 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:
- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
 - b) an invoice from each Subcontractor listed in the Contract Activity Report.
- 14.6 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XV - ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS

- 15.1 **ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.** Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.
- 15.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XVI - CITY POLICY PROVISIONS

- 16.1 **Nondiscrimination.** Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 16.2 **Compliance with City's Equal Opportunity Contracting Program.** Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor and all of its subcontractors are individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders

11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Contractor shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Contractor will take to achieve City's commitment to equal employment opportunities. Contractor shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by City's Equal Opportunity Contracting Program staff. Contractor's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and City may bar Contractor from participating in City contracts in accordance with San Diego Municipal Code section 22.0801 et. seq..

- 16.3 **Local Business and Employment.** Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Contractor shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor shall hire *qualified local residents and firms whenever feasible.*
- 16.4 **City Employee Participation Policy.** Contractor shall be in default of this Agreement if Contractor employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement. This provision does not apply to members of the City Council.
- 16.5 **Drug-free Workplace.** Contractor shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 16.5.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and
- 16.5.2 Establish a drug-free awareness program to inform employees about all of the following:
- a) The dangers of drug abuse in the workplace;
 - b) Contractor's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee-assistance programs; and

- d) The penalties that may be imposed upon employees for drug abuse violations.

16.5.3 Contractor shall include in each of its contracts related to this Agreement language obligating each contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Contractor, and each of its contractors and subcontractors, shall be individually responsible for their own drug-free workplace program.

- 16.6 **Disabled Access Compliance.** Contractor shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 16.7 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.
- 16.8 **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.
- 16.9 **Changes or Amendments to Agreement.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be made in compliance with the then current local code, council policy and regulations. If such change does not affect the total payment, the amendment may be made by written agreement signed by both parties. A change which affects total payment provided hereunder, shall be taken to City Council for authorization if the then current threshold dollar amounts require City Council action. Otherwise, the change may be made by written agreement signed by both parties.

ARTICLE XVII - GENERAL PROVISIONS

- 17.1 **Compliance with Law.** Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Contractor shall comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations.

- 17.2 **No Political Activity.** Contractor shall not use and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term "political activity" shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 17.3 **Open Meetings and Brown Act Compliance.** The Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et. seq. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.
- 17.4 **California Public Records Act.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 17.5 **Confidentiality of Information.** Notwithstanding any other law or provision in this Agreement, all information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City. This section does not apply to publicly known information or records which are subject to the Public Records Act.
- 17.6 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to City:

City of San Diego
Attn: Economic Development Division
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to contractor: University Heights Community Development

Corporation
PO Box 3115
San Diego, CA 92163-1115

Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service, or one business day after deposit with a reliable overnight courier.

- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 17.8 **Unavoidable Delay.** If the performance of any act required of City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 17.9 **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 17.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 17.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
- 17.12 **Entire Understanding.** This Agreement contains the entire understanding of the parties. City and Contractor, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of

any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.

- 17.13 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 17.14 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval, except as otherwise stated herein.
- 17.15 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 17.16 **Waiver.** A Party's failure to insist upon the strict performance of any of the other Party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The Parties' waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the party making such waiver to constitute a valid and binding waiver. The Parties' delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. The Parties' failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but a Party may at any and all times require the cure of the default.
- 17.17 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.
- 17.18 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. City shall promptly provide notice to Contractor of any new or revised rules and regulations which affect this Agreement.
- 17.19 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.20 **Consents, Approvals.** Neither City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.

17.21 **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

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17.22 **Authority.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City that such authority is valid, and that such entity is a valid, qualified corporation, in good standing and qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: July 11, 2008

UNIVERSITY HEIGHTS COMMUNITY
DEVELOPMENT CORPORATION, a California non-
profit corporation

BY: [Signature]

Name: CHRISTOPHER F. MILNES

Title: EXECUTIVE DIRECTOR

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Name: Hildred Pepper Jr.

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: Kimberly K. Kaelin

Title: Deputy City Attorney

EXHIBIT A

IMPLEMENTATION PLAN AND BUDGET



**University Heights CDC – Community Parking District
Annual Plan and Budget – FY 2008 – 2009**

Introduction and Brief History

The University Heights CDC has been in existence since 1987, receiving its 501(c) (3) non-profit status in 1991. The University Heights Community Parking District (UHCPD) was officially recognized as an independent sub area under the MidCity Parking District in 1999 because of the serious parking problems in its business district. Being an older urban community, the main commercial area is a combination of mixed use properties with several commercial uses that have late hours and minimal off street parking. Consequently, the commercial parking flows over to the adjacent residential areas creating many conflicts between business owners and residents.

Community Issues and Involvement

Since then the UHCPD has completed and implemented Phase I of a Parking & Mobility Study; added angle parking where feasible, a pedestrian refuge crossing to its neighborhood park, improved pedestrian safety with crosswalks and stop signs. It has joined with residents to resolve parking issues with late night businesses, one of which has initiated valet parking as a result. Board members participate in and sit on the boards of various other organizations – Uptown Planners, Greater North Park Planning Committee, UH Park & Recreation Council, UH Maintenance Assessment District, Friends of the UH Branch Library, the University Heights Community Association (UHCA). A board member is currently an appointee from Council District 3 to the City's Parking Advisory Board.

The UHDCDC board is also the board for the CPD and as a result incorporates parking issues at each meeting to which an aide from Council District 3 and the CPD Program Manager are invited to attend. The UHCPD works with the UHCA in resolving issues that are raised by residents at its monthly meetings. The UHCPD has had bike lanes installed on Madison, Maryland and Cleveland and added striping along the parallel parked cars on Adams Avenue between Louisiana and Alabama to narrow lanes and slow traffic, and this year will seek additional parking on Meade when the Birney Joint Use Playing Field re-opens in 2009. The UHDCDC is also supportive of needed improvements with a reinitiated Caltrans grant to provide design guidelines for the east/west arterials along Washington/Normal/Park Blvd., University and Robinson. This grant incorporates pedestrian safety, traffic calming, mitigation of traffic congestion, and increasing methods of facilitating greater use of public transit.

Proposed Activities for FY 2009

The program budget consists of operating expenses for office and meeting space -- 55% of total budget.

The program budget consists of marketing expenses of \$2,230-- 6% of total budget. Outreach and promotion will be through sales of meter cards in the office, at special promotional events, availability through the new UHDCDC website, meetings and conferences, articles in the *University Heights News* and distribution of Parking 101 through libraries and the DMV office.

4452 Park Boulevard, Suite 104
San Diego, CA 92116-4039
(619) 297-3166 Fax: (619) 297-3228

Mailing:
P.O. Box 3115
San Diego, CA 92163-1115

University Heights CDC – Community Parking District
Annual Plan and Budget – FY 2008 – 2009
(Continued)

In addition the program budget consists of the following two projects:

(1) Work plan to complete Phase II of Parking Mobility Study with contingency for additional meetings by the board's parking consultant The Mission Group in the amount of \$15,000– 39% of total budget. This may also include the following:

- Review of yellow and red parking zones to free up additional spaces;
- Angle parking south side on the rest of Meade Avenue between North Avenue and Campus, which will require School District sign off;
- Installation in early 2009 of Driver Feedback sign on Mission Avenue;
- Evaluation of Driver Feedback sign on Madison between Texas & Park Blvd.,
- Pedestrian safety survey in the *University Heights News* and on the UHCDC website;
- Distribution of a parking survey to businesses within the Park Blvd. and Adams Ave. commercial corridors from Meade to Louisiana to seek parking solutions;
- Evaluation on whether shuttle service to Trolley Barn Park summer concert series from First Southern Baptist Church is feasible as well as evaluation on how parking around the Trolley Barn Neighborhood Park can be increased;
- Promotion and sales of Pre-Paid Parking Meter Cards.

(2) Website should be up and running by the start of the FY2009 contract year. The \$5,275 cost has been offset by an AT&T grant of \$4,000 and subsidies from the UHCPD plus other community programs sponsored by the UHCDC that do not have access to a website. This project will provide greater outreach and promotion of both the City's Community Parking Program and the UHCPD through surveys, e-newsletter, updates on parking innovations by the City, information on Pre-Paid Parking Meter Cards, and links to other parking informational sites including the DMV website.

COMMUNITY PARKING DISTRICT
Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

CHART OF ACCOUNTS	CDP Funds	Other Funds	Total
Ordinary Income/Expense			
Income			
CPD	208,437		208,437
Other (e.g. Sale of Parking Cards)	0	0	0
Total Income	208,437	0	208,437
Expense			
Personnel	0	0	0
Executive Director	0	0	0
Administrative Assistant	0	0	0
Fica/R Expense	0	0	0
Health Insurance	0	0	0
Total Personnel	0	0	0
Operating			
Rent - Office	2,400	0	2,400
Telephone/Fax/Cell/Internet	1,600	0	1,600
Mtngs/Conf/Dues/Subscriptions	350	0	350
Printing	1,500	0	1,500
Insurance - Liability	4,000	0	4,000
Insurance-Workers Comp	0	0	0
Total Insurance	4,000	0	4,000
Postage	500	0	500
Audit	2,000	0	2,000
Accounting Services	1,800	0	1,800
Office Supplies	1,600	0	1,600
Other Expense - professional services	1,500	0	1,500
Other Expense - purchase of meter cards	1,000	0	1,000
Other Expense - special events	600	0	600
Other expense - licenses and property taxes	185	0	185
Other Expense - equipment lease	2,200	0	2,200
Other Expense - utilities	850	0	850
Other Expense - HOA special assessments	1,750	0	1,750
Total Operating	23,835	0	23,835
Outreach/Promotion			
Newsletter	0	0	0
Marketing (Web Site, Brochure)	0	0	0
Specify Other	0	0	0
Total Outreach/Promotion	0	0	0
Contracts			
Contractor 1	15,000	0	15,000
Contractor 2	0	0	0
Total Contracts	15,000	0	15,000
Program / Reserve	0	0	0
Contingency	0	0	0
Total Expense	38,835	0	38,835

COMMUNITY PARKING DISTRICT
Operating Budget Template

PROPOSED OPERATING BUDGET FY 2009

Net Ordinary Income	169,602	0	169,602
Net Income	\$169,602	\$0	\$169,602

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
2. All of the following conditions are met:
 - (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.
 - (b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.

- (c) Any membership owned by the interested party abstains from voting on the matter.
 - (d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.
 - (e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.
 - (f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.
3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
 - ▶ No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12-month period:
 - ▶ Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - ▶ Present price proposal information to full board for approval of contract or transaction.
 - ▶ Record the action taken in the meeting minutes, and keep the written price proposals on file.
3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - ▶ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - ▶ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - ▶ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - ▶ Record action taken by the board in meeting minutes and keep the proposals received on file.
 - ▶ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and *unenforceable*, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01

AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND GREATER GOLDEN HILL COMMUNITY DEVELOPMENT CORPORATION FOR OPERATION OF THE GREATER GOLDEN HILL COMMUNITY PARKING DISTRICT

This Agreement [Agreement] is entered into by the City of San Diego, a California municipal corporation [City] and Greater Golden Hill Community Development Corporation [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City has established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council has designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement, And City Heights Business Improvement District) as the Greater Golden Hill Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289521, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2009 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 1.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 1.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in the Implementation Plan and Budget attached hereto as Exhibit A.
- 1.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.